

JOINT COMMITTEE  
ON INDIAN CONSTITUTIONAL REFORM

[SESSION 1932-33]

VOLUME III  
**RECORDS**

I to X

of the Joint Committee on

INDIAN CONSTITUTIONAL  
REFORM

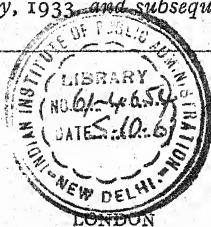
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CONTENTS AND AN INDEX

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# Memoranda by the Secretary of State for India on the Financial Implications of (1) Provincial Autonomy and (2) Federation

1. The object of this paper is to afford some guide to the points which may arise in discussion of the financial implications of the constitutional changes now under consideration; it does not attempt to supply answers to the problems which arise, nor do any opinions expressed reflect the views of His Majesty's Government. Figures are given in crores of rupees; one crore—i.e. ten million—of rupees is equivalent to £750,000. Sterling equivalents, in millions of pounds to two decimal places, have been indicated in the margin.

2. The problem of the allocation of resources under the new Constitution may be considered under two heads; firstly, the readjustments which are desirable in the financial relations of the Centre and the Provinces if the latter become autonomous; and secondly, the financial implications of the establishment of a Federation. As far as possible, the two points are separately treated as Parts I and II below. A summary of the proposals in the White Paper is given as Part III.

## PART I.

3. At present all the revenues of British India are in theory available to the purposes of the Governor-General in Council, and the Government of India Act of 1919 does not recognise any division between the revenues of the Centre and the Provinces. But Rules under section 45A of the Act assign certain sources of revenue to the Provinces, corresponding in the main to the provincial subjects administered by them, though the Centre retains a final call on all the revenues of the Provinces (see Devolution Rules 14-20). In practice the Provinces budget for the disposal of the revenues accruing to them under these arrangements and the Centre only intervenes to the extent of requiring a Province to re-establish its finances in the event of a deficit. The general result at the present time is shown in the following Table, from which may be gathered the manner in which the total revenues of British India are now divided as between the Centre and the Provinces, the main sources from which revenues are derived, and the relative importance of the various items of revenue and expenditure.

TABLE I.

*Budget Estimates of Revenue and Expenditure of Central and Provincial Governments in 1933-34.*

| <i>Central Revenue.</i>     |                            |       | <i>Central Expenditure.</i>    |                            |       |
|-----------------------------|----------------------------|-------|--------------------------------|----------------------------|-------|
|                             | Rs. =<br>Crores. millions. | £     |                                | Rs. =<br>Crores. millions. | £     |
| Customs (net) ... ..        | 50·27                      | 37·70 | Post and Telegraphs (net) ...  | ·61                        | ·46   |
| Income taxes (net) ... ..   | 17·21                      | 12·91 | Debt:                          |                            |       |
| Salt (net) ... ..           | 7·60                       | 5·70  | Interest (net) ... ..          | 8·97                       | 6·73  |
| Other taxes (net) ... ..    | ·60                        | ·45   | Reduction of Debt ... ..       | 6·89                       | 5·17  |
| Net tax revenue ... ..      | 75·68                      | 56·76 | Civil Administration (net) ... | 8·76                       | 6·57  |
| Opium (net) ... ..          | ·63                        | ·47   | Pensions (net) ... ..          | 3·02                       | 2·26  |
| Railways (net) ... ..       | Nil                        | Nil   | Civil Works (net) ... ..       | 1·72                       | 1·29  |
| Currency and Mint (net) ... | 1·11                       | ·83   | Defence Services (net) ... ..  | 46·20                      | 34·65 |
| Payments from States ... .. | ·74                        | ·56   | Subvention to N.W.F.P. ...     | 1·00                       | ·75   |
| Total ... ..                | 78·16                      | 58·62 | Miscellaneous (net) ..         | ·74                        | ·55   |
|                             |                            |       | Total ... ..                   | 77·91                      | 58·48 |
| <i>Provincial Revenues.</i> |                            |       | <i>Provincial Expenditure.</i> |                            |       |
|                             | Rs. =<br>Crores. millions. | £     |                                | Rs. =<br>Crores. millions. | £     |
| Land Revenue ... ..         | 35·29                      | 26·47 | Land Revenue and General       |                            |       |
| Excise ... ..               | 14·85                      | 11·14 | Administration ... ..          | 14·86                      | 11·14 |
| Stamps ... ..               | 12·40                      | 9·30  | Police ... ..                  | 12·38                      | 9·28  |
| Registration ... ..         | 1·14                       | ·85   | Jails and Justice ... ..       | 7·66                       | 5·75  |
| Scheduled Taxes ... ..      | ·48                        | ·32   | Debt ... ..                    | 4·21                       | 3·16  |
| Total tax revenue ... ..    | 64·11                      | 48·08 | Pensions ... ..                | 5·08                       | 3·81  |
| Forests (net) ... ..        | ·69                        | ·52   | Education ... ..               | 11·80                      | 8·85  |
| Irrigation (net) ... ..     | ·49                        | ·37   | Medical and Public Health ...  | 5·23                       | 3·92  |
| Miscellaneous ... ..        | 11·82                      | 8·49  | Agriculture and Industries ... | 2·89                       | 2·17  |
| N.W.F.P. subvention ... ..  | 1·00                       | ·75   | Civil Works ... ..             | 8·33                       | 6·25  |
| Total ... ..                | 77·61                      | 58·21 | Miscellaneous ... ..           | 7·34                       | 5·51  |
|                             |                            |       | Total ... ..                   | 79·78                      | 59·84 |



6<sup>o</sup> *Julii*, 1933.]

THE FINANCIAL IMPLICATIONS OF

[Continued.]

(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

£ millions

\*68·68

†58·62

‡58·48

\$58·62

||66·19

¶58·21

\*\*·94

††1·50

4. These figures cannot be taken as representing a normal budget; they reflect the results of depression and of the severe economies in both Army and Civil expenditure undertaken to meet it. If a comparison be made with the table given on page 215 of Volume II of the Report of the Statutory Commission, it will be seen that the Central revenue has declined from 84.9 crores\* in 1929-30 to 78.16 crores† in the present budget year, and the expenditure has been reduced from 84.9 crores\* to 77.91 crores.‡ (In order to make the two sets of figures comparable the cost of collection has been treated as a deduction from revenue instead of an item of expenditure.) The figure of 78.16 crores§ has only been attained by emergency taxation, i.e. the surcharge on income tax, customs and salt. The provincial figures represent a fall in aggregate income from 88.25 crores|| to 77.61 crores;¶ and the aggregate surplus of 1½ crores\*\* shown in 1929-30 has been converted into a deficit of 2 crores.†† The abnormality of the current budget makes it an insecure basis for estimating the result of the adjustments which will be required in the relations of the Centre and the Provinces, and the subsequent paragraphs will furnish proof of the great difficulty we must encounter in gaining a clear financial perspective of the effect of the constitutional changes now under discussion.

5. If the Provinces are to become autonomous, it will be necessary to place them in possession of resources secured to them by statute, and to consider what power, if any, the Centre (however constituted) should have to call upon these resources in a national emergency. On the other hand, separation of finance must be complete in the sense that the finances of the Provinces must be self-contained; we must envisage the end of a situation in which Provinces can feel that they have a right to rely on Central assistance in the event of a breakdown of their own finance. The allocation of powers and resources must obviously be such as to recognise the strength of the claims which the spheres of action assigned to the Centre and the Provinces respectively entitle them to make upon the total available finances of British India. Viewing the total sum available as a common pool, it is legitimate to regard the demands of the Centre upon that pool as normally definable and subject to limitation, since supply is required by it mainly for charges such as Defence, Debt Services, and the comparatively restricted sphere of Central Civil Administration. It must at the same time be accepted as an axiom that the dominant importance of the safety and credit of India requires that the Central demand for supply should constitute a prior charge. Moreover, the means available to the Centre must be adequate to fulfil additional demands due to emergencies, such as frontier war or economic depression. Such demands, it is suggested, ought normally to be capable of fulfilment from within the Central field of taxation. Although it is possible to give the Centre a power of precept upon the incomes of the Provinces in such emergencies, in practice this would create great difficulties because a sudden derangement of their administrative and other activities would probably result, even to the point of a breakdown. While the scope of Central demands is thus to a large degree measurable, the demand of the Provinces must, on the other hand, be regarded as unlimited, since they are concerned with all the important activities necessary to national development. For the present purpose however it is to be noted that there are two immediate claims which take priority over this more general claim. The first comes from those Provinces



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(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

which experience shows to be more or less permanently in deficit or on the border-line of deficit even with the present limited scale of expenditure. There is good ground for feeling that it would be impracticable to give autonomous powers to these Provinces before such a situation is rectified. Secondly, in addition to the maintenance of special provision for the North-West Frontier Province, substantial sums will be required to finance the new Provinces which it is proposed to create, viz. Sind and Orissa. Moreover, when considering the effect of these various claims, it will be necessary to have regard in any calculations to the possibility of the separation of Burma.

£ millions

6. It will be apparent from this preliminary sketch that the problem of the allocation of powers and resources as between the Centre and the Provinces resolves itself into three objectives, which in order of priority, are as follows:—

(1) To provide the Centre with (a) a secure means of meeting the normal demand on account of the services for which it is responsible, together with an adequate reserve power to raise from its own resources the additional sums which those services may in an emergency require; and (b) some additional reserve to meet necessary developments in its own sphere of work (of which Civil Aviation may be taken as an illustration).

(2) To secure to the Provinces, as a minimum, the amounts now available to them, together with the sums required to meet the ascertained deficits of certain Provinces and to establish the newly-created Provinces.

(3) To secure that, when (1) and (2) are satisfied, the main benefits of any improvement in Central finances will inure to the benefit of the Provinces.

7. In applying the principles thus stated, it is of course necessary to abandon the convenient supposition of a common pool, and to take up the concrete problem of the assignment of sources of revenue. Their assignment must be conditioned by the respective spheres of legislative and administrative control, which connotes that, in the main, they will be the same as are shown in Table I above. Such a distribution of sources gives the Centre most of the elastic heads of income, such as Customs, Taxes on Income and Salt. In general these heads have in the past shown themselves to be expanding or readily capable of expansion. The Provinces on the other hand possess heads of income which are relatively inelastic and incapable of expansion. Thus Land Revenue (which is responsible for nearly half the present aggregate income of the Provinces) is permanently fixed in some Provinces, while in others it can be reassessed only at fixed intervals, which in some cases are as much as 40 years. Excise, the second largest provincial head, may with a recovery to normal conditions show some return towards the figure of 1929-30 (namely, 19.44 crores\*) included in the table given at page 215 of the Report of the Statutory Commission; but progress in this direction is always liable to be retarded by the tendency of local Legislatures to support schemes of restriction based on a policy of prohibition. With these general considerations in mind, we may now turn to the first question arising, viz. what are the requirements of the first principle stated in paragraph 6 above, and how far is it possible

\*14.58

6° Julii, 1933.]

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[Continued.]

(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

£ millions to provide, after its satisfaction, for a surrender by the Centre, either in the present or in the future, of any part of the income which it can draw from the sources assigned to it?

8. It would not be useful to attempt any estimate of the provision required to satisfy the first principle of paragraph 6 except on the basis of existing conditions and modifications which can be clearly foreseen. For instance, credit cannot be taken for fundamental reductions in the scale of Defence or for new taxes which cannot be expected to materialise in the immediate future and the yield of which is problematical. In approaching the expenditure side of the current Central budget, it must again be emphasised that the figures shown represent the result of severe economies. The principal item, Defence Services, stood at 56.23 crores\* net 10 years ago, and the fall to 46.20† net is due largely to retrenchment, though also (to the extent of about 1 crore‡) to the fall in commodity prices—a factor which may prove to be temporary. The present budget figure is regarded by the Military authorities as barely satisfying the normal requirements of the Army at its present strength, for it has involved the depletion of stocks of supplies and the postponement of building and other programmes. The next largest head, Debt Services, already reflects a substantial proportion of the possible savings by conversion, so that the range of possible decrease in the near future is limited. Civil Administration has already been heavily reduced, the figure of 8.76 crores§ net representing a decrease of 2½ crores|| in four years. The expenditure side of the Central budget certainly appears to bear out the Finance Member's description of "fine cut." Furthermore, there are certain more or less visible increases to be accounted for. The complete restoration of the pay cuts would cost rather more than 1½ crores¶ (excluding Railways). We are here considering only items that can be foreseen apart from the federalising of the Centre; the possible additional cost of the new constitutional machinery due to Federation will be considered in a later paragraph. The only offsetting factor in prospect appears to be the gain of .6 crore\*\* through charging the Provinces with the cost of their Audit and Accounts at present paid for by the Centre. On the whole, it seems improbable that obligatory expenditure will decline in the next few years, and even possible that it will rise slightly above its present level.

9. Clearly therefore the resources reserved to the Centre must continue to produce no less revenue than is at present available. Any margin for transfer to the Provinces must arise either from a higher yield of the existing taxes and an improvement of the non-tax sources, or from the opening up of new sources of revenue. An examination of the potentialities of improvement in existing sources is not easily reduced to concrete figures, but one consideration is of relevance. Non-tax receipts, especially from the "commercial" departments, have declined heavily under the influence of depression. The extent of this decline is shown by a comparison of the figures at page 215 of the Statutory Commission's Report which took credit for 6.25 crores†† from Railways and 2.35 crores‡‡ from Opium. In spite of economic depression, tax rates have been so enhanced as to give an actual increase of over 3½ crores§§ this has involved very high rates and a strain which it is difficult to maintain. An improvement in the position is dependent on world economic recovery, to which India may be expected to react as rapidly as almost any country; railway receipts, for instance, have on previous occasions shown great resilience to a sudden recovery in trade

6<sup>o</sup> *Julii*, 1933.]

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[Continued.]

(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

conditions, and it has just been shown how important a part they can bear in the total Central receipts. On the other hand, there are some rather more ponderable adverse factors to be considered. Firstly, unless and until recovery takes place, the position is bound to remain somewhat precarious. Thus the trade balance depends on gold exports, a discontinuance of which would affect India's power to finance imports and makes serious inroads on Customs revenue. Secondly, whether or not there is an early recovery, the following points must be noted. Customs receipts are already being heavily reduced owing to the effect of a protective tariff in stimulating a rapid growth of the white sugar industry; while the high protective duty on piece-goods may also produce a deterioration in receipts. Currency receipts would be reduced by rather more than 1 crore\* per annum in the early years of the proposed Reserve Bank, pending its development of full profit-earning capacity. Receipts from Opium (now .63 crore† net) may be expected to vanish after 1935 owing to the policy of restricting exports. Moreover, the separation of Burma would occasion a net loss to the Central budget of from 2 to 4 crores‡—the exact amount cannot be stated as several important questions have yet to be settled, but this seems a safe estimate of the probable range. Thirdly, the scope and rapidity with which the effects of recovery would be felt are subject to further limitations. Some 13 crores§ of revenue in the current budget are attributable to the recent "emergency" surcharges on Customs, Taxes on Income, and Salt. A reduction in the present high rates is generally considered desirable, and presupposes a very considerable economic recovery if the present yield is to be maintained at lower rates. Again, although recovery should bring about an appreciable improvement in receipts from "commercial" departments, yet in looking at the levels attained in the years of comparative prosperity it must be remembered that the Railways now bear heavier interest charges than in the previous period; their reserves are heavily depleted and must presumably be restored as conditions improve; and even the present unsatisfactory position is arrived at after benefiting to the extent of nearly 1½ crores|| from pay cuts. The Posts and Telegraphs Department is also in a less favourable position owing to the burden of revised salaries. To summarise the Central revenue position therefore, it may be said that, without a general trade recovery, the position is not only precarious but liable to some deterioration. With trade recovery, the Central position will rapidly improve, but the exact measure of improvement is not predictable, and it is not until we have seen the earlier stages of recovery that we shall be able to determine the extent of the additional resources on which we can count.

10. As regards immediate prospects of opening up new sources of revenue, there is nothing to be added to the conclusions in Chapter III of the Federal Finance Committee's Report. These were that a Central excise duty on tobacco grown or manufactured in India could not be relied on to yield any substantial revenue in the near future; that an excise duty on matches was a practical proposition and might yield 2½ crores¶ in British India; but that no immediately reliable sources of new revenue could be detected in the direction of other excises, monopolies or special treatment of certain stamp duties. Though the Central Government (whether Federalised or not) may be compelled to make the attempt to raise fresh revenues by means of new excises, yet it is possible only to conclude that the excise on matches is the sole new tax which can now be taken into account as an immediate reinforcement of Central revenues.

£ millions

\*·75

†·47

‡1·5 to 8

§9·75

||1·13

¶1·88



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(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

[Continued.]

11. Summarising the position at the Centre, it may broadly be stated that everything depends on world economic recovery, and the factors have been given which will be likely to operate on the rapidity or extent to which Central finances will react to recovery. Moreover, in estimating the practicability of utilising any future expansion for the benefit of the Provinces, it must not be overlooked that the reserve power required by the first principle enunciated in paragraph 6 above has to be established; in other words, that a repetition of depression cannot entirely be ruled out of the reckoning. The conclusion may be stated in general terms as follows. The position of the Centre is at the moment such that it has great difficulty in meeting the obligatory demands of Central expenditure, demands which are not in themselves easily susceptible of further reduction. An improvement would therefore be required before it could make the provision required for the satisfaction of the second principle as stated in paragraph 6 above, the cost of which will now be discussed in paragraph 12. A further much more substantial improvement would be required before it would be in a position to provide funds for the satisfaction of the larger requirements of the third principle stated in paragraph 6 above.

12. Turning now to the provision necessary to satisfy the second principle, issues are raised which have occasioned much controversy in the past. The financial settlement following the passing of the Act of 1919 placed considerable additional resources at the disposal of the Provinces and thus depleted the finances at that time available to the Centre. This was adjusted by levying fixed sums by way of "contributions" from the Provinces (except Bihar and Orissa); the method of assessment of these contributions gave rise to much debate and to some contention both between the Provinces and the Centre and between Provinces themselves. It was finally decided to assess them on the amount of the additional revenues which the settlement made available to each Province. As a result, the Provinces which contained industrial centres complained that the assignment of income tax to the Centre deprived them of revenues earned or collected in their Provinces, leaving them only fixed or unexpanding heads of revenue. Those which produced commodities on which an export tax is levied (such as jute) or material on which an excise is levied (such as oil) complained that the assignment of those taxes to the Centre deprived them of sources of taxation which were legitimately provincial. The agricultural Provinces complained that the contribution levied from them did not take into account the need for working up to standards of administration which previous circumstances had made possible for more developed Provinces; and they were also inclined to resent the burdens which, in their view, a protective policy thrust upon them, largely in the interests of industrial Provinces. The contributions were remitted with early effect in the case of Bengal; and the improvement of Central finances, due partly to the gradual reduction of Defence expenditure to more normal levels and partly to the resilience of customs and income tax receipts to the increased taxation imposed in 1922-23, permitted the complete extinction of the contributions of the remaining Provinces in 1927-28. Though this left the Provinces as a whole with larger resources, there remained inequalities between the standards of administration which those resources permitted. That disparity in standards was, in fact, a result primarily of historical developments and of the inequality of natural conditions. Thus, the permanent settlement of land revenue which obtained in some Provinces was less favourable to the development of income than settlements which could in other Provinces be revised in accordance with the

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(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

increase of cultivation or the rise of prices. Again, the possession of sources of water supply had enabled some Provinces to improve their resources more rapidly than others less favourably situated. (For example, in 30 years the Punjab has brought about one-third of the cultivated area of the Province under irrigation from State canals.) The resultant disparity in standards is illustrated by a statement given in the Report of the Statutory Commission (Vol. II, p. 223) :—

TABLE II.

(1) *Expenditure per head of population according to 1929-30 Budgets in rupees, and*

(2) *Density of population per square mile.*

|         | Madras | Bombay | Bengal | United Provinces | Punjab | Burma | Bihar and Orissa | Central Provinces | Assam |
|---------|--------|--------|--------|------------------|--------|-------|------------------|-------------------|-------|
| (1) Rs. | 4.1    | 8.2    | 2.5    | 2.7              | 5.5    | 8.6   | 1.8              | 3.7               | 3.9   |
| (2)     | 279    | 156    | 608    | 427              | 207    | 56    | 409              | 139               | 143   |

13. It was the general conclusion of the Statutory Commission that it would not be feasible to undertake now a radical readjustment of Provincial finance on a basis which would allow of an equalisation of standards as between Provinces. It is almost impossible to evaluate the different factors necessary to such an operation, such as the character of the population, the claims of urban and rural interest, or the effect of differences in administrative methods which have been evolved over a long series of years; nor is it likely that a tribunal could be found the judgment of which would satisfy the rival interests of the Provinces. In any case, the narrow range of finance available seems to leave not alternative to proceeding at present on conditions as they exist in an attempt to satisfy immediate needs. It will presumably be regarded as axiomatic that the position of no Province should be worsened under the new arrangements. There remains the question of implementing deficit budgets, firstly of the existing Provinces, and secondly of the Provinces which it is now proposed to create. The Federal Finance Committee attempted, in paragraph 11 of their Report, to forecast the probable future position of each Province under more or less normal conditions in the future. The result is reproduced in Table III below. As a guide to immediate prospects, however, the figures of the 1933-34 budgets (also given below) are more strictly relevant. These, it should be noted, represent the position arrived at after severe retrenchment in some, though not perhaps all, Provinces.

TABLE III.

| Province.                          | Federal Finance Forecast. |        |                          |        | 1933-34 Budgets.         |        |                          |        |
|------------------------------------|---------------------------|--------|--------------------------|--------|--------------------------|--------|--------------------------|--------|
|                                    | (Surplus + ; Deficit -).  |        | (Surplus + ; Deficit -). |        | (Surplus + ; Deficit -). |        | (Surplus + ; Deficit -). |        |
|                                    | Rs. crores                | =      | £ million.               |        | Rs. crores               | =      | £ million.               |        |
| Madras ... ..                      | — 20                      |        | — 15                     |        | + 04                     |        | + 30                     |        |
| Bombay ... ..                      | — 65                      |        | — 49                     |        | — 28                     |        | — 21                     |        |
| Bengal ... ..                      | — 200                     |        | — 150                    |        | — 219                    |        | — 164                    |        |
| United Provinces ...               | + 25                      |        | + 19                     |        | + 04                     |        | + 30                     |        |
| Punjab ... ..                      | + 30                      |        | + 22                     |        | + 51                     |        | + 38                     |        |
| Burma ... ..                       | (No estimate)             |        |                          |        | + 26                     |        | + 20                     |        |
| Bihar and Orissa ...               | — 70                      |        | — 53                     |        | — 14                     |        | — 11                     |        |
| Central Provinces ...              | — 17                      |        | — 13                     |        | — 02                     |        | — 02                     |        |
| Assam ... ..                       | — 65                      |        | — 49                     |        | — 35                     |        | — 26                     |        |
| North-West Frontier Province.      | (No estimate)             |        |                          |        | + 04                     |        | — 08                     |        |
|                                    | + 55                      | — 4.37 | + 41                     | — 3.28 | + 85                     | — 3.02 | + 64                     | — 2.27 |
| Or deducting Burma and N.W.F.P.... |                           |        |                          |        | + 59                     | — 2.98 | + 44                     | — 2.27 |

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[Continued.]

£ millions

\*2.25

†3.38

‡1.13

§.45

||.38

¶2.25 to 3

\*\*60

††.21

‡‡.26

§§3 and 3.75

14. It is claimed by the Provinces now in deficit that they are more or less permanently in that state, even at the present reduced scale of expenditure. It is also probable that the sum of their deficits is not likely to be much less than the present 3 crores,\* while the Federal Finance Committee's forecast of about 4½ crores† may perhaps represent an upper limit. It must be remembered that a complete remission of pay cuts in the Provinces would cost nearly 1½ crores‡ in a full year and that additional expenditure on Accounts and Audit (mentioned at the end of paragraph 8 above) would amount to about .6 crore.§ Moreover, increased Provincial expenditure on new Constitutional institutions cannot be less than an annual charge of ½ crore.|| For the purposes of the present survey it would be safe to assume that deficits of not less than 3 to 4 crores¶ are to be expected. This, however, is a mere working hypothesis, and it will not be possible to state the exact sum necessary to obviate these deficits until an examination of the facts has been made by some competent authority, which should, it is suggested, take account only of actual commitments, and not of general needs or projected programmes of expenditure. It may be noted that there are certain outstanding questions of accounts between the Provinces and the Centre referred to in the Percy Committee Report, of which the pre-Reform irrigation debt may be taken as an illustration. The accumulated deficits of certain Provinces also constitute an "overdraft" of considerable size on the Centre. It is desirable that the adjustment between the Centre and the Provinces should now be final, and it may perhaps be indicated to the authority above mentioned that it should make recommendations which would secure this result. Finally, there are the requirements of the new Provinces of Sind and Orissa to be implemented. Estimates of the amounts involved are given in the Appendix to the Report of the Third Round Table Conference on Federal Finance (pp. 60-61 of Cmd. 4238). For about seven years Sind would require .805 crore\*\* per annum, and during the succeeding eight years it is anticipated that the amount would gradually be reduced to zero. Orissa is likely to require .285 crore†† at first and .35 crore‡‡ after about 15 years. Against this may be set the probability that the separation of Sind would leave Bombay free from deficit, and that the surplus position of Madras would be slightly improved by the separation of Orissa. Altogether, it is possible that the provision required for deficit and new Provinces may amount to between 4 and 5 crores.§§

15. It is necessary to consider whether this provision must come entirely from the Centre. Provincial revenues are more stable than Central in the sense that they react less quickly to general causes such as economic depression, but they are consequently likely to respond less quickly than Central to an improvement in general conditions. For these reasons it is difficult to rely on the possibility of economic recovery so increasing the yield of provincial resources as to supply the funds required to meet the immediate shortcomings described in the preceding paragraph. The possibility of raising revenue from new sources was examined by the Federal Finance Committee (Chapter III of their Report). They concluded that Provincial taxation of tobacco was not likely to provide much new revenue in the near future, though eventually it might be useful; that succession duties and the taxation of agricultural income (in addition to land revenue) are so controversial as to be unreliable in planning for the future; and that terminal taxes would have to be strictly safeguarded, and should not be regarded as a normal source of revenue. It was their general conclusion that "such provincial taxes as appear to be within the range of practical politics in the immediate future cannot be relied on to yield any substantial early additions to provincial

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revenues.' It seems to follow that the fulfilment of the second principle enunciated in paragraph 6 above must depend very largely on the ability of the Centre to make over the requisite funds. The review of the Central position which was concluded in paragraph 11 shows that the discovery of the necessary margin depends on the initial recovery of the Central position. Even a decision to defer the institution of the two new Provinces would not appreciably alleviate the situation.

16. Assuming, however, that funds will at some time become available for the satisfaction of the second principle of paragraph 6, it remains to discuss the methods by which they should be distributed among the Provinces. The first method is the grant of subventions, whether permanent or terminable. The second is the allocation of the proceeds, in part or whole, of some Central head or heads of revenue, an addition to which is the grant of power to surcharge particular Central heads. There are really two stages to be considered in the grant of assistance to the Provinces, i.e., the initial stage of implementing deficits and the secondary stage of placing additional resources at their disposal which will allow of their future development (the third principle of paragraph 6). It will perhaps be agreed that the method of direct subvention is more appropriate to the first stage. At this stage a logical distribution of particular heads on some principle such as that of population is likely to involve a greater draft on the Centre, because some benefit is almost certain to be conferred where it is not essential. Perhaps the only obvious exception to this observation is afforded by the possible allocation of revenue from the export duty on jute. That may be represented as based on considerations of convenience rather than of principle, in view of the peculiar position of Bengal. Its deficit is large, and will clearly continue. The allocation of proceeds from the duty on jute would be mainly confined to Bengal itself; half the duty would cost the Centre about 1.5 crores,\* giving Bengal about 1.35,† Bihar and Orissa .1‡ and Assam .05.§ The chief apparent objection to subventions is the evident breach in the general principles of provincial autonomy which they involve. On the other hand, their claim is strong when finances are so straitened, while some breach in the autonomous principle seems inevitable even on the alternative plan, since it seems necessary that any of the present Central taxes, even if distributed, must form the subject of uniform Central legislation. Some of the considerations affecting distribution on the basis of specific heads of revenue will be apparent from the succeeding paragraph.

17. The third principle advanced in paragraph 6 has now to be considered. As already indicated, the provision of means for the future development of the Provinces must depend partly on their capacity to exploit their own rather restricted sources of revenue, but in the main must depend on such improvement in Central finances as will permit the assignment to the Provinces of resources available in excess of the requirements of the first two principles. A further difficult field of enquiry is now revealed, and it will perhaps be convenient to state the problems very briefly as a series of questions to be answered. *First*, is it feasible in present circumstances to lay down any scheme of dates which the distribution of resources should follow? The Federal Finance Committee concluded, in a slightly different connection, that in effect no prescription of dates at which the Centre could dispense with revenue was possible. The developments since they reported, as reflected in the later facts quoted in this note, will perhaps be felt to confirm this conclusion. *Second*, if this be agreed, what authority shall decide when the time has come at which assignment may properly commence, by what methods, and to what extent? (Conversely, if there be a programme,

£ millions

\*1.13  
†1.01  
‡.08  
§.04



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what provision must be made for its suspension?) The difficulty of placing the decision on the Central Executive, whether this is federalised or not, lies in the fact that the interests of the Centre and the Provinces may here be held to be in conflict. The alternative is an Order in Council, and there may be held to be justification for this in the fact that His Majesty's Government would not merely be acting in an arbitral capacity, but would be concerned in safeguarding what must here be the dominant consideration, the stability of Central finance. *Third*, on what basis should shares be allocated to the Provinces, and from what sources of revenue? This question raises highly technical issues and also impinges on the field of inter-provincial controversy to which allusion has been made in paragraph 12.

The problem is complicated, contentious and difficult to state briefly. Arbitrary subventions will doubtless be recognised to be out of place in this connection. The method of permitting local surcharges upon Central taxes would only possess advantages if the basic rates on which such surcharges were founded were so moderate as to enable surcharges to be imposed at a figure likely to yield real benefit to Provinces. The rates are at present too high to allow of any effective imposition of Provincial surcharges, and the method must be deferred until the position of the Centre permits of its adoption as one of the means by which a Central surplus can gradually be passed off to the Provinces. It would then have a definite value as allowing Provinces to vary (within prescribed limits) the pitch of their taxation to suit their own needs. In the meanwhile discussion must centre chiefly upon the distribution of heads of revenue centrally raised. If it were decided to distribute the revenue from salt, no problem of great difficulty would arise, since distribution would no doubt follow consumption; but hitherto discussion has, for various reasons, turned on the distribution of income tax. Here we at once re-enter the field of controversy regarding the claims of the industrial and agricultural Provinces, the former demanding that their position as main producers of this tax should be considered before any general distribution takes place. But apart from the counter-claims of the agricultural Provinces, who base their claim chiefly on the needs of a large and backward population, there are serious technical difficulties in attempting to trace the geographical derivation of income tax. A reference to paragraphs 59 to 75 of the Percy Committee Report will explain some of these difficulties and at the same time provide details of a suggested scheme of allocation which attempts to pay regard to both points of view. It is necessary to state here that expert examination of the basis proposed by the Federal Finance Committee reveals some practical difficulties in the application of its details, though these may perhaps not be found to be insurmountable. On the whole, perhaps the most hopeful line will be found in the distribution in the first instance of income tax, proceeding on an agreed basis which will recognise the incidence and the derivation of the tax, while contemplating that at a later stage we may proceed to the distribution of some indirect head of revenue, such as salt.

18. Is it possible to go beyond this picture, in which the uncertainties occupy so much of the foreground? One can only attempt greater precision with much reserve. The question with which Part I of this note is concerned is the introduction of provincial autonomy. It may perhaps be asked why it is assumed that income must be increased in order to find the additional sum required to implement provincial deficits, since the expenditure is actually being incurred already. But it is being incurred against loans taken from the Centre, and in some cases at least there appears to be some prospect that the Provinces may never be able to repay these "overdrafts"

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which they have secured to finance their deficits. The constitution of the Provinces as separate financial units on the one hand implies the withdrawal from the Centre of any responsibility for the stability of provincial finance, and of any authority to ensure this; on the other, it implies that Provinces must be placed in a position in which they can, without borrowing, meet their current obligatory expenditure, including the discharge of the service of loans already secured by them. Moreover, some part of the sum required (i.e., that needed for the new Provinces and for the new legislative institutions) represents an actual addition of new expenditure.

19. It may be convenient to conclude this section with an attempt to evaluate rather more precisely than was done in paragraph 11 the general effect of the various factors to which reference has so far been made. So far as the Centre on its present basis is concerned the Budget is balanced, but no weakening of Central resources in *present circumstances* seems permissible. Before the first principle put forward in paragraph 6 could be regarded as satisfied it might be necessary to stipulate at least that the pay-cuts should be remitted (involving the provision of about 1½ crore\*) and that the emergency surcharges should be withdrawn. The latter postulates that the amount of over 13 crores† at present attributable to the surcharges should, owing to economic recovery, be produced by taxes at unsurcharged rates. It may be assumed roughly that other prospective debit and credit items at the Centre will strike a balance. Thereafter the question of creating new Provinces, including the separation of Burma, has to be considered. For this purpose further improvement of the Central position would be necessary up to a point at which sums, the range of which may be placed roughly at 6 to 8 crores,‡ could safely be spared. It must be realised that, even with this provision, some of the Provinces, and in particular those which have effected drastic economies, will start off on a bare subsistence level. Whatever the precise value of these figures, it is in any case clear that some considerable betterment of Central finances, and on an assured basis, must take place before the Centre can make the surrenders necessary to establish the Provinces as independent financial units on such terms as will allow them to rest securely on their own resources.

## PART II.

20. It has been possible to deal separately with the financial adjustments rendered desirable by the creation of autonomous Provinces because the federalising of the Centre will not (save in respect of some items of comparatively less importance which will be subsequently noted) itself involve any immediate change in the expenditure budgets of the Centre or the Provinces. Indeed, it may be found that the task of the Select Committee, in dealing with the financial aspects of Federation, will, owing to the exigencies of the financial position, have to be confined in the main to discussing certain important matters of principle pre-conditioning Federation, rather than adjustments of figures of a similar range to those dealt with above.

21. It will be necessary in the first place to examine the present position of the States in relation to Central finance. The only direct contribution now made by the States to British India finances is the sum of .74 crore§ shown in Table I under the head "Payments from States." These payments have in previous discussions been referred to under the general name of "tributes." The Report of the Indian States Enquiry Committee (1932) shows that the sum of .74 crore§ is the aggregate of a number of payments

£ millions

\* .94

† 9.75

‡ 4.50 to 6

§ .56

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£ millions

mostly secured by treaty, but various in origin. Some payments are due to specific causes, that is to say, they represent fixed cash contributions in lieu of the maintenance of a State army, whether under British or Indian State command, or in quittance of the grant of assistance by maintenance of forces for the preservation of law and order in the locality of the State. Others represent tributes originally paid to other States but acquired by the British Government through conquest or lapse. Others again are of a more general nature, representing contributions in acknowledgment of sovereignty. There is no uniform system of "tribute." The list of contributing States is a long one, but the sums paid are of very unequal amount, one State (Mysore) paying as much as one-third of the whole, while many States, including some of the most important, pay no contribution at all.

22. The Davidson Committee also dealt with another class of contribution which, though it does not appear among the figures of Central receipts, is claimed to have a common origin with "tributes," namely, the territories "ceded" in the past to the British Government by five of the States in return for specific guarantees of military protection, in preference to paying a fixed cash "tribute." The grounds for treating such cessions as analogous to cash contributions have been fully discussed in Chapter IV of the Committee's Report, and the Committee of the Third Round Table Conference on Federal Finance accepted the view that some form of relief was required in respect of them (page 56 of Cmd. 4238). It was held that retrocession of the ceded territory was impracticable, and that the alternative to retrocession would be the payment to four States of annuities amounting to .37 crore\* of rupees. No calculation was made of the value of the areas ceded by Hyderabad as that State asked that the military guarantee for which it ceded territory should continue in being.

\*\*28

23. The Davidson Committee further ranked as a "miscellaneous contribution" the voluntary maintenance of State Forces, available for use on the mobilisation of the Indian Army. Here also no uniform system has been followed, and units maintained are unequally distributed between the States. The total annual expenditure is said to amount to 2 crores† of rupees; but valuable as is this voluntary contribution to the military strength of India, the amount mentioned cannot be quoted for the purpose of any financial adjustment, as it takes no account of the sums contributed by the British Government through the supply of arms, &c., nor would State Forces, even where they attained a level of efficiency necessary for modern warfare, be necessarily required for purposes of general defence. There are other minor contributions of a miscellaneous nature (railway and cantonment lands, &c.), which can be neglected for the present purpose.

†1.50

24. The Davidson Committee passed from the consideration of direct and indirect credit items to what are potentially debit items, described under the terms "privileges and immunities." Briefly, these constitute financial advantages which individual States enjoy, by Treaty or Agreement, in respect of certain sources of income which, under Federation, would normally be at the unrestricted disposal of the Federation itself. Thus under a developed Federal system, all receipts from the salt monopoly would accrue to Federal revenues; but certain States enjoy privileges in regard to manufacture or sale of salt, which have been valued at .38 crore,‡ or, if the special case of Kathiawar and Cutch be included, at .46 crore§ annually. Similarly, with regard to customs certain States enjoy by Treaty or Agreement advantages which are of great financial importance to them. The

‡.29

§.35

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Committee examined these advantages at length but found that, in the present unstable condition of trade and uncertainty as to the issue of discussions still in progress regarding the interpretation of treaties, it was impossible to supply a reliable estimate of their future value for the purpose of buying them out. The value of the immunities enjoyed by 14 of the Maritime States amounted in 1931 to 1.80 crores,\* but may since have decreased with the decline in imports. The adjustment of these advantages will have to remain for settlement during the process of negotiating instruments of Accession to Federation. It may be contemplated that if the demands made by individual States for compensation on extinction of these advantages involve too great a burden on Federal finances, it will not be possible to include those States in the Federation.

£ millions

\*1.85

25. These remarks have reference to the financial position of certain States as Governments. The subjects of most of the States make a substantial, though indirect, contribution to British India finance on account of sea customs. Thus the Butler Committee (quoted in Statutory Commission, Vol. II, p. 271) suggested that the share taken by them of imported goods might be reckoned at about 16 per cent. of the total consumption and the share of customs duty paid in the States has since been computed by a Government of India Committee at one-seventh of the total. There is also some indirect contribution through salt purchases, and a more indirect contribution through currency profits and profits of trading companies earned in the States but brought to account in British India. These figures were of some relevance at a period before Federation had come under discussion, since the States had then claimed that they were entitled to a share of the customs duties of which the incidence might rest upon their subjects; but they are of less relevance now that customs, salt and currency receipts may be viewed as Federal and not as potentially divisible between States and British India. On the other hand it is proper to remark that the States point out that they are also as Governments concerned in the receipts from customs duty. The States Governments import a considerable amount of railway, electrical and irrigation plant. They claim that by Treaty they are entitled to Defence without any payment to the British Government (other than the Tributes paid by individual States), and that this contribution to customs duty does in effect constitute such a payment. By entering Federation they would sacrifice the claim which they have hitherto advanced that they should receive a refund of these payments.

26. The discussions relating to Federal finance at the Round Table Conferences were long and intricate, and turned in part on arguments of a somewhat theoretical nature. Thus it was sought to redistribute proceeds of taxation on the assumption that the most appropriate field of Federal revenue lay in indirect taxation, leaving direct taxation to British India units. But, as the figures given above appear to show, the receipts from income tax are (at all events at the present) so far necessary to Federal solvency that their allocation to British India units would probably have to be only nominal. The latter would almost certainly have to pass them back to the Federal Government. Again, it was at one time sought to establish some difference between that portion of the Public Debt for which commercialised or similar assets exist and that which is uncovered by assets of this nature. It was suggested that since the Federal Government would take over the assets to which the first class of debt might be related it should properly be liable for the service of that debt, while the British India units should be liable for the second class, sufficient income tax being



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retained by the Federation to cover the relevant charges. Subsequent discussions show that many debatable questions arise out of this proposition; in fact the suggested division is artificial and divorced from the realities of the position, since the public debt stands as a whole secured, not on definite assets, but on all the revenues of British India. It may certainly be argued that part of the uncovered debt has been incurred for all-India as distinguished from British India purposes. Difficulties, though of a somewhat different nature, arose from the attempt to discriminate between pension charges which could be considered properly as Federal or as British Indian, but here, as the charges are rapidly diminishing and it would be almost impossible to determine the proper incidence of pensionary charges, no useful purpose would be served by pursuing this line. These suggestions were not fruitful of results because they did not in themselves afford a means of satisfying either the States or British India units that the real conditions which they envisage as necessary to their entry into Federation could be fulfilled.

27. These conditions may now be stated as follows. The States desire an assurance of the solvency of the Federation before they enter it. This implies not only a present capacity to pay for existing charges, such as defence and the service of pre-Federation debt, but a reasonable assurance that commitments to the British India units are not likely to place Federal finances in a position which will involve a future demand for increase of Federal taxation in order to maintain solvency. Such a demand might possibly go beyond what could be met by increase of indirect taxation and thus involve a requisition for direct contributions in some form from State units. The Provincial units, on the other hand, are interested in seeing that the commitments to the Provinces are not unduly limited in the interests of Federal solvency. Moreover, responsibility for the future policy of the Federal Government, and the financial consequences thereof, will and should be a mutual concern. The Provinces therefore are interested in obtaining from the States some recognition of the principle of "equality of burdens" in Federation. This does not necessarily mean that the States should make a contribution to Federal finance proportionate to that derived from British India. That would in any case be difficult to calculate, because we should have to set off, *inter alia*, the indeterminate amount of indirect contributions referred to in paragraph 25 above in some attempt to equate burdens with the still more indeterminate factor of benefits; and indeed, as the Davidson Committee point out, the true contribution of the States cannot be weighed in terms of money, since they put into the scales a portion of their own sovereignty. But the Provinces point out that the Federation, in taking over what are now Central sources of revenue, would take credit not only for revenues derived from what may be considered essentially Federal assets, such as customs and salt, but also revenues derived from a head such as income tax, which, but for the overriding necessities of Central finance, might normally go in whole or part to the Provinces from which they are derived. As a reply to this, the States have urged that one of the chief contributory causes of stringency at the Centre will be the erection of new and the continued subsidy of existing deficit Provinces. For these the States have undertaken no responsibility, and they are not asking themselves for any subsidy even to the poorest of the States.

28. In effect, a compromise solution must be found in the answers to the following questions. *First*, will the finances secured to the Federal Government be sufficient to meet the charges which it is known will fall

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on it at its inception? *Secondly*, will any contemplated assignment to the Provinces of shares of future improved revenues involve the likelihood that the maintenance of solvency in the future will place a direct burden on the States? *Thirdly*, is it possible to obtain from the States an agreement to pay some contribution which will recognise the position which has been put forward above as that of the British India units?

£ millions

29. In seeking an answer to the first question account must be taken of the Central Budget as it will stand after making provision for deficit Provinces and new Provinces, for this will not have been the consequence of Federation, but of the institution of autonomous British Provinces. Some addition must be made for the charge which will fall on Federal finances by the establishment of a Federal Court, and the cost of the contemplated Federal Legislature over that now incurred on the Central Legislature; this has been calculated by the Government of India at from  $\frac{1}{2}$  to  $\frac{3}{4}$  crore\* of rupees, though it is possible that the cost of this item may be somewhat reduced by the States paying their own representatives instead of allowing them to be paid from Federal revenues. Allowance must also be made for the charge which would fall on Federal revenues if the States' contributions described in paragraph 21 above were extinguished. There has been a general agreement that "there is no permanent place for such exceptional and unequal contributions in a system of Federal finance" (paragraph 26 of page 96 of Cmd. 4238). The Round Table Conference suggested that their extinction should be completed within 20 years, and that a moiety at least should be extinguished within 10 years; or, in any case, that the whole should be extinguished in a period not longer than that during which the Federal Government would complete surrender to the Provinces of the share of income tax which it was then proposed it should necessarily relinquish. (Reasons have been given above for holding that it may not now be feasible to consider a surrender of the same extent or within the proposed period.) The sum of .74 crore† representing the "tributes" would in any case be reduced by the amount of the "immunities" enjoyed by the individual States paying tribute. (See for fuller explanation paragraph 443 of Report of the Davidson Committee.) It should be emphasised in this connection that though British India is concerned with the aggregate of State contributions and immunities, the States must enter Federation as separate units; the debits of one State cannot be set off against the credits of another, and a balance sheet will be required in the case of each individual State. The resultant cost to Federal finance will have to be determined by further examination, but it will be less than the sum of .74 crore‡ now credited to Central revenues. Provision has also to be made for the credits to certain States on account of ceded territory (paragraph 22). The estimated amount of .37 crore‡ would be reduced by the value of any immunities now enjoyed. Though the acceptance of these claims might constitute a condition precedent to entry to Federation, it might perhaps be decided to spread their actual satisfaction over a period of some length. Moreover, since these contributions are at present an integral part of the resources by which the solvency of British India is preserved, it will probably be contended by the Provinces that any breach in that position as a result of their remission can hardly be charged to British India alone and should fall in part on Federal revenues. This argument, it is true, may find a reply from the States that the tributes are due to the Crown and not to British India (see Davidson Report, paragraph 37) and that the cost of the new Provinces alone exceeds the amount to be remitted on account of tributes and

\*\*88 to '56

†.56

‡.28

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ceded territories. As regards the treatment of other immunities and privileges (other than those which come into account as a set-off against the extinction of "tributes" or credits for ceded territories) somewhat different considerations apply. The general principle, applicable throughout, was stated by the Federal Finance Committee of the Third Round Table Conference (Report, paragraph 29) as being that "each State coming into Federation should, as far as possible, assume liability for an equitable portion of Federal expenditure." This general principle is one which will no doubt be brought before the Joint Select Committee for discussion; but, as suggested in paragraph 24 of this note, the final detailed treatment of the complicated questions arising cannot substantially affect the Budget as it will appear at the inauguration of Federation.

30. If, however, the considerations advanced in Part I of this note are correct, the creation of autonomous Provinces will not be possible until there has been a considerable betterment of Central revenues; the charges referred to in the preceding paragraph will impose an additional demand which will presuppose a somewhat larger Central balance as a preliminary to Federation, even though the gross amount of this addition may be reduced by spreading out the period for the extinction of tributes or payment for ceded territories. Even, however, if improved conditions make it possible to discharge these combined obligations without actual deficit to the Central budget, the States may possibly press that the Centre can only be said to have arrived at that state of "solvency" which justifies Federation when the improvement recorded is such as to leave some margin for safety within the region of Central finance.

31. As to the second question proposed in paragraph 28 the considerations advanced in Part I of this note point to the conclusion that any assignments contemplated in favour of the British India units must be viewed as the promise of future drafts on a Federal surplus; that surplus can only come to hand at a further stage of recovery in advance of the initial stage which is required to satisfy the conditions precedent to Federation. It is here possible only to make the point that the facts revealed regarding the present Central position may dispose the States to press that any assignments to British units now laid down for future operation shall be on a scale compatible rather with the requirements of Federal stability than with the desires of the Provinces; they are likely also to lead them to scrutinise carefully the character of the authority empowered to decide when the assignments shall become operative (paragraph 17 above). It is further pertinent to emphasise here a conclusion which is implicit in previous paragraphs, that in making assignments it will be necessary to make provision for the proper "balance" of Federal finances. The alienation of an undue share of sources of direct taxation (e.g., income tax) would leave Federal finances at a disadvantage if indirect sources (e.g., customs) were affected by trade depression or by a protective policy, even admitting that some part of the loss resulting from a successful protective policy would be made good by increased receipts from income tax. This is a consideration of importance to the maintenance of Federal solvency, but it is not purely financial. It is essential that the Federal Government, in discussing tariff policy, should be able to weigh the results of that policy on its general finances and must have adequate control over both sources of income, direct and indirect, in order to give effect to its policy.

32. In regard to the third question propounded in paragraph 28, the Provinces may contend that the general claim put forward by British India units (paragraph 27) would be reinforced by the surrender of tributes and

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the payment of annuities of ceded lands. That loss would not have accrued to existing British Indian revenues as the result of constituting autonomous Provinces; it is incidental to the institution of Federation; and, though the relief granted will admittedly accrue to the benefit of individual States, yet British India units might perhaps press for a contribution from the States as a whole equivalent to a loss which has not been due to the requirements of British India units. There may be some hesitation on the part of non-tributary States in accepting the principle of this claim; but the contention of British India would to some extent be met by the agreement of the States recorded at the Third Round Table Conference (paragraph 8 of the Report of the Federal Finance Committee of the Conference of 1932). The States have throughout been opposed to the application to them of any form of direct taxation, but they then agreed (though with some dissentients) to assume the burden of a "corporation" tax (i.e., tax on profits of companies) as from the date on which the Federal Government would complete surrender to the Provinces of the share of income tax which the Conference proposed to assign to them. It must be mentioned, however, that this agreement was linked up with the condition that "a satisfactory yield from taxes on income is permanently assigned to the Federation." That condition takes us back to the answer which can be given to the second question (paragraph 28), and does not refer to the particular argument given in the earlier part of the present paragraph. The agreement was also subject to the condition that, the assessment on the companies having been made, the State may raise the amount due to the Federal fisc by any method it may choose, and not necessarily by the actual levy of the tax. This condition would avoid direct taxation, though it is perhaps useful to note that circumstances might be held to require that in the interests both of companies and of Federal finance, assessment should be made by an agency of the type of that now employed on the assessment of this tax in British India, and that some arrangement should be made for hearing assessment appeals by an authority of a type similar to that now available to companies assessed in British India.

£ millions

33. It is not easy to assign a precise value to the benefit which Federal finance will receive from the payment of a "corporation" tax by the States, but it will clearly not be considerable. Its importance lies rather in the concession of principle. Indeed, although the adjustment of tributes, immunities, and the like, are of the greatest political importance, and the concession of a corporation tax also possesses its own value, these questions, even if satisfactorily settled, will not have any decisive bearing on the solution of the main difficulty described in Part I of this Note. That solution must be found in the rehabilitation of Central finance; Federation, even on the most satisfactory terms, will not itself assist in its achievement.

### PART III.

34. It may be useful to summarise here the proposals of the White Paper for dealing with the allocation of revenues. It will be seen that while retaining for the Federal fisc the major and exclusively Federal heads of revenue such as Customs and Railway receipts, it provides that, as regards a second class, namely, salt, Federal excises (e.g., oil) and export duties (e.g., jute), the whole or part of the net revenues derived from any one or more of these sources may be assigned to the units, while in the case of the export duty on jute the assignment to the producing units would be compulsory and would amount to at least 50 per cent. of the duty. As shown in paragraph 16, Bengal would on present figures receive about 1.35 crores.\*

Paragraph 137.

\*1.01



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THE FINANCIAL IMPLICATIONS OF

[Continued.]

(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

- £ millions      Assam about .05 crore,\* and Bihar and Orissa about .1 crore,† or a total loss to Federal revenues of 1.50 crores.‡ This assignment would proportionately reduce the claims of these Provinces to initial subventions on account of their budget deficits. In addition to strictly provincial sources secured by the Constitution Act, the Federal Legislature would be empowered to impose and assign for the benefit of the Provinces certain sources of revenue, viz., death duties, terminal taxes on railway-borne goods or passengers, stamp duties subject to all-India legislation at the time of federation, taxes on mineral rights and personal taxes on capital other than land; the Federal Legislature would determine the basis of distribution to Provinces. In the main these taxes represent only potential sources of income of which it is not at present possible to estimate the benefit, and they cannot be taken into account in estimating the position now or in the immediate future. It is also proposed that the Federation shall be empowered to impose and retain a surcharge on such taxes for Federal purposes.
- Paragraph 138.
- Paragraph 139.      35. The major addition proposed to the existing provincial resources consists in the allocation of a share of not less than 50 per cent., but not more than 75 per cent., of the income tax, excluding the tax on profits of companies, and excluding also sums derived from taxes on emoluments of Federal officers or taxes collected in areas federally administered (Delhi, etc.). The exact figure will be prescribed by Order in Council, which will be laid before Parliament for approval. A scheme is laid down for progressive surrender of this source of income, to be completed in 10 years after the commencement of the Constitution Act; but the process of surrender in whole or part may be deferred at his discretion by the Governor-General, if he considers, after consultation with Federal and Provincial Finance Ministers, that the continuance of the process for the time being would endanger the financial stability of the Federation. It may be mentioned that out of the present income tax revenue of 17½ crores,§ approximately 3¼ crores|| represent corporation tax and income tax on the emoluments of Federal officers or attributable to federally administered areas. Of the remainder, 10½ crores¶ would come for distribution under the proposed system of sharing with Provinces, the balance of 3¼ crores\*\* being ranked as a Federal surcharge, as will presently be mentioned. The amount of each of these items would be reduced by about one-eighth if Burma were separated.
- §12·94  
||2·63
- ¶7·88  
\*\*2·44
- Paragraph 141.      36. The Federation would have power to impose for its own benefit surcharges on the income tax, and no part of these surcharges would go to the British India or State units. While such surcharges were in operation each State member of the Federation would, unless it had agreed that the Federal income tax should extend to the State, contribute to Federal revenues a sum to be assessed on a basis prescribed by Order in Council. As an exception to this, no contribution would be required from the States if the present emergency surcharge (which would rank as Federal) were still in force. Finally, it is proposed that the Federal Legislature should be empowered after an expiry of 10 years after the commencement of the Constitution Act, to extend the corporation tax to the State members of the Federation. This may, if the State prefers, be collected directly from the State and not from the companies concerned. (On this see paragraph 32 above.)
- Paragraph 142      37. The Appendix attached gives certain figures which, though only approximate, may be found of some use in an attempt to evaluate the financial significance of the White Paper proposals relative to the Central Government's position as sketched above. As regards these proposals, discussion will no doubt be mainly directed to the proposal to leave income tax as a Federal source, while assigning a certain share to British India

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THE FINANCIAL IMPLICATIONS OF

[Continued.]

(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

units, to the proposed extent of the assignment, and to the proposal to fix dates, as from the commencement of the Constitution Act, for the operation of the assignment. A second point will be the proposal to make compulsory the assignment to certain Provinces of a fixed portion of the jute duty; a third will be the measure to which the levy of a corporation tax (in the manner proposed) will meet the claim of British India for a States' contribution to Federal finances. But apart from any questions of this nature which may arise in consideration of the scheme as set out in the White Paper, or indeed of any scheme involving surrender of Central revenues, it may be felt necessary to examine the fundamental questions whether financial conditions are such as to affect any assumption we may make as to the date on which provincial autonomy can be introduced; and further, whether we can assume such further general recovery as will enable us now to plan out the lines of a Federation on terms which will satisfy the States on the one hand that their financial future under Federation is secure, and British Indian units on the other that under Federation they can hope to obtain the funds to which they look for development. In considering these questions, the assumptions made in paragraphs 19 and 30 regarding the extent of the requisite improvement in Indian finances will, if accepted, have an important bearing. Attention is also invited, in this connection, to the second half of paragraph 60 of the Introduction to the White Paper,\* and to the Secretary of State's remarks in the House of Commons on 22nd February last.†

\* "His Majesty's Government attach the highest importance to securing to the Federation adequate resources, without which the Federal Government cannot ensure the due fulfilment of liabilities upon which must depend the credit of India as a whole.

"A possibility which cannot be dismissed from consideration is that economic and financial conditions might on the eve of the inauguration of the new Constitution be such as to render it impracticable to supply the new Federal and Provincial Governments at the outset of their careers with the necessary resources to ensure their solvency. If, after the review contemplated above, the probability of such a situation should be disclosed, it would obviously be necessary to reconsider the position, and it might, *inter alia*, be necessary to revise the federal finance scheme contemplated in these proposals."

† "Having made these two general observations, let me take my hon. and gallant Friend's points in order. He says, first of all, that the state of Indian finance will not admit of setting up a Federal Government at the centre. I agree with him that the state of Indian finance, much improved as it is, is not yet as satisfactory as we should desire. I agree with him further, that if an attempt is made here and now to finance the Federal centre, and finance at the same time autonomous Provinces, it will be very difficult to find the money. I do further say that it is impossible for us to-night to forecast the exact position when the act of Federation takes place. I further say to him, and I hope this may to some extent reassure him, that I do not suppose anybody here, or indeed in India, will be prepared to bring Federation into being if it is quite obvious that the Federation will be insolvent. My own view, which is supported by many of my expert advisers, is that the Federal Government would not cost substantially more than the existing Central Government, and that the problem of adjusting finances between the centre and the Provinces is much the same whether Federation is set up, whether Provincial autonomy is started, or whether we keep the centre as it is now."

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(1) PROVINCIAL AUTONOMY AND (2) FEDERATION.

[Continued.]

## APPENDIX.

## (1) WHITE PAPER PROPOSALS.

| (a) <i>Deterioration.</i>   |        | Rs. crores=£ million |      |
|---|--------|----------------------|------|
| (i) Cost of new or enlarged constitutional machinery                | Say 1  | ·75                  |      |
| (ii) Alienation of half jute export duty (present yield)            | 1½     | 1·13                 |      |
| (iii) Subventions to deficit and new Provinces (additional to (ii)) | ... .. | Say 2½               | 1·88 |
| (iv) Alienation of income tax (assuming Burma not separated):—      |        |                      |      |
| (a) 50 per cent.  | ... .. | About 5½             | 3·94 |
| (b) 75 per cent.  | ... .. | About 8              | 6·00 |
| (v) Settlement of States' excess contributions                      | ... .. | About 1              | ·75  |
| (b) <i>Improvement.</i>   |        |                      |      |
| (i) States' payments under corporation tax or surcharges            | ... .. | ( ? )                |      |

## (2) CENTRAL BUDGET.

|   |     |          |               |
|---|-----|----------|---------------|
| (a) <i>Deterioration.</i>                               |     |          |               |
| (i) Loss of opium receipts                              | ... | ...      | ·6 ·45        |
| (ii) Decline in customs...                              | ... | ...      | ( ? )         |
| (iii) Loss of currency receipts                         | ... | ...      | Say 1 ·75     |
| (iv) Restoration of civil and military pay cuts         | ... | About 1½ | ·94           |
| (v) Separation of Burma                                 | ... | Say 3    | 2·25          |
| (b) <i>Improvements.</i>                                |     |          |               |
| (i) Excise on matches                                   | ... | ...      | About 2½ 1·88 |
| (ii) Other new taxation (small)...                      | ... | ...      | ( ? )         |
| (iii) Improvement under loan charges (small)...         | ... | ...      | ( ? )         |
| (iv) Saving under Accounts and Audit                    | ... | ...      | ·6 ·45        |
| (c) <i>Other factors retarding effects of recovery.</i> |     |          |               |
| (i) Withdrawal of emergency surcharges                  | ... | ...      | About 13 9·75 |
| (ii) Restoration of railway pay cuts                    | ... | ...      | About 1½ ·94  |

## RECORD I—(contd.)

### Statement by the Secretary of State for India on the subject of Federal Finance

*Sir Samuel Hoare:* My Lord Chairman, this is one of the most difficult and complicated questions that we have got to consider. It is difficult in itself, but it is made ten times more difficult by the conditions in which we approach it. Obviously, with the state of the world as it is, with the financial and economic uncertainties that face us, it is extraordinarily difficult to make even general estimates for the future.

Now, my Lord Chairman, there have been many inquiries into the questions that we are here to consider this morning. There was first of all the inquiry carried out by Sir Walter Layton on behalf of the Simon Commission. I think my colleagues will agree that there is no more comprehensive chapter in the whole of the Report of the Simon Commission than the chapter dealing with Finance. Then, after that, came a series of inquiries carried out either by the Round Table Conference itself or by the Percy Committee of the Conference. I suppose that there was no question that gave us more trouble or took up more time in our deliberations in London, and there was no more complicated inquiry connected with the constitutional proposals than the inquiry which was made by Lord Eustace Percy and his Committee in India. Since then we have had a constant interchange of communications between the India Office and the Government of India, and between the Government of India and every one of the provincial Governments. I make this preliminary observation for the purpose of showing to the Committee and the Delegates that from the very first we have fully investigated the difficult problems connected with Federal Finance, and never, from the beginning, have we shirked the formidable issues that they create. My Lord Chairman, with this great mass of material, this series of inquiries, and this flood of statistics in which we have been involved now over many months past, it seemed to you that it would be well to have an objective summary made for the use of the Committee's discussions. You and I had some talk upon the subject, and it seemed to me that the best thing that I could do to carry out your desire and to meet what I believed to be the wishes of the Committee and the Delegates as a whole, was not to put in a memorandum from the India Office but rather to ask Sir Malcolm Hailey to take all the material that is at my disposal and with his experience, quite a unique experience, both as a former Finance Member of the Viceroy's Council and as the Senior Governor in India, who has been Governor of two of the greatest provinces in India, to ask him to make such a summary and to have it circulated to the Committee. The figures in the summary are all taken from the official documents, and the India Office and the Government of India take full responsibility for them. Apart, however, from that, we have left Sir Malcolm Hailey absolutely free to present the statement\* in his own way as he thought fit. The document, my Lord Chairman, is before the Committee to-day, and I think we should all say that it is a very full and comprehensive summary; and, speaking for myself, I would say it is just the kind of memorandum that we needed if our discussions are to be instructive discussions in the future. My Lord Chairman, not only is it a very comprehensive document, but it is a document, I claim, that does not shirk any awkward facts; it puts the whole case before the Committee; it does not make light of the financial difficulties in the way of progress, and

\* Memorandum entitled "The Financial Implications of (1) Provincial Autonomy and (2) Federation."



6<sup>o</sup> Julii, 1933.] STATEMENT BY THE SECRETARY OF STATE [Continued.  
FOR INDIA ON THE SUBJECT OF FEDERAL FINANCE.

it ignores none of the awkward problems that are connected with the question. My Lord Chairman, I imagine that the first impression left upon every Member of the Committee and upon every Delegate is a rather depressing impression. There we see set out in all their nakedness the awkward financial facts connected with the Government of India to-day and the Government of India of to-morrow. Let me allude to one or two of them. Let me take, first of all, the case of the provinces. There, my Lord Chairman, you will see, if you look at the figures, connected with the setting up of provincial autonomy, Sir Malcolm Hailey comes to a general conclusion that the expenditure involved may be something between 6 and 8 crores (see para. 19 of Sir Malcolm Hailey's memorandum). If you analyse the figures you will find first of all that about three-quarters of a crore is needed for the overhead expenses of setting up the new provincial machinery; that is to say, the cost of the provincial legislatures and the cost of the electorates (including  $\frac{1}{4}$  crore for new machinery of government in the new Provinces of Sind and Orissa). Next there is another figure of about half a crore that is involved by the provincial governments taking over certain expenditure that is now borne by the central government. Then there is a further figure of from two to three crores, assuming that Burma is separated from India; and lastly there is a figure of from three to four crores that would be involved if the provincial deficits were to be removed, and the provinces to be set up upon a self-supporting basis. This includes the provision of resources to cover deficits that would otherwise arise in the areas of Sind and Orissa on their being constituted separate provinces.

That comes in all to a figure of between 6 and 8 crores. My Lord Chairman, that looks a very formidable figure, and I will come to analyse it in some greater detail in a moment or two; but let me pass from the provinces to the Federal centre. I think you will find that the expenditure for the Federal centre is a figure of about  $2\frac{1}{2}$  crores. Of this about  $\frac{3}{4}$  crore is for fresh expenditure on the legislature, etc. The other item is a figure of perhaps  $1\frac{1}{2}$  crores which would be a temporary budgetary loss on the establishment of the Reserve Bank, due to the proposed diversion of currency profits to the building up of the reserves of the Bank. When these have been built up currency profits should again accrue to Government in the shape of surplus profits of the Bank. In actual practice the building up of a banking reserve ought to have some effect upon the method by which the Indian Federal Government deals with its sinking funds. If they get better credit at one end, they might possibly make some alteration in their sinking fund arrangements at the other. We also have to remember that there is the complicated problem of States tributes, ceded territories and "immunities" which was so fully investigated by the Davidson Committee. Part II of Sir M. Hailey's memorandum includes a review of the subject. For the moment it is only necessary to bear in mind that the *ultimate* cost to federal revenues of these adjustments is likely, after a period of years, to reach about 1 crore a year.

Now, my Lord Chairman, all that looks a very formidable state of affairs, and the question arises as to whether there are any countervailing factors that ought to be taken into account. First of all there are certain countervailing factors, but they are of such an uncertain character that it is very difficult to know what reliance to place upon them. There is, however, one fact that is beyond doubt and contradiction, and that is a factor that must not be forgotten when we approach these broad issues, namely, that Indian credit is steadily improving. I do not linger on

6<sup>o</sup> *Julii*, 1933.] STATEMENT BY THE SECRETARY OF STATE [Continued.  
FOR INDIA ON THE SUBJECT OF FEDERAL FINANCE.

that point at this stage, but it is a material factor in our general considerations. Next there is the fact that, anyhow judged by past experience, India responds more quickly than almost any country in the world to an upward movement in the economic field. India being dependent to a great extent upon primary commodity prices, responds equally quickly when commodity prices fall and when commodity prices rise. Thirdly, there is, I believe, still opportunity for economies to be carried out in certain fields of administration in India, particularly provincial administration, and lastly there is the fact—or perhaps I should say there is the hope (I do not put it higher than that at this moment)—that as a result of the proceedings of the capitation Tribunal, the Tribunal that was to analyse the expenditure of Great Britain and India for the defence of India, which has finished its deliberations, and out of those deliberations might eventuate (I do not put it higher than that) a contribution of some kind towards the defence expenditure of India; but, my Lord Chairman, I quite admit that anyhow two or three of those factors are uncertain factors, and that we must come to a much closer analysis of the figures. We must base our reasons upon much more definite data if we are to say that the picture painted by Sir Malcolm Hailey in his summary is not as black as appears at first sight.

Before proceeding to further analysis of the position as I have so far described it, I will digress in order to give some figures regarding the public debt of India, which are, of course, important in relation to the credit of India. The total obligations of India are 1212 crores. Of this amount 705 crores are held in India and 507 crores in England. The division into remunerative and dead-weight debt is as follows. Remunerative debt—that is debt represented by interest-bearing assets, railways for instance in particular—is 969 crores. Not so represented 206 crores, leaving a small sum of 37 crores that is held in cash and bullion.

Sinking fund provision, of which the aggregate amount is calculated with reference to the whole debt, is nearly seven crores a year.

Now, my Lord Chairman, I return to the analysis of the position already set out. I think two significant facts emerge from the figures. The first fact is that the greater part of this deficit, call it, if you will, from six to 10 crores, is due not to the setting up of the Federal Government in the centre but to the setting up of autonomous provinces upon a self-supporting basis. I would lay especial emphasis upon this fact, that by far the greater part of the deficit is due not to the setting up of the Federal centre but to the setting up of the autonomous provinces upon a self-supporting basis. Next, a second fact that emerges is that a very small part of this deficit, take it if you will at the highest figure, say, of 10 crores, is due to actual fresh expenditure. If you analyse the figures you will find that, apart from a comparatively small sum, namely, about three-quarters of a crore, for setting up the new machinery in the provinces, and a figure of about the same amount, namely, about three-quarters of a crore for setting up the Federal institutions in the centre, the rest of this amount is not fresh expenditure at all, and it is due in the main to two changes in the allocation of the revenues of India, namely, first of all, the change, supposing Burma is separated from India, of leaving Burma two or three crores that it now contributes to the Indian Central Government. Secondly, it is due to a figure of about the same amount, some two crores, that is necessary whether changes take place in the constitutional field or whether they do not, to put a stop to the permanent deficit in Bengal and the permanent deficit in Assam.

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6<sup>o</sup> Julii, 1933.] STATEMENT BY THE SECRETARY OF STATE [Continued.  
FOR INDIA ON THE SUBJECT OF FEDERAL FINANCE.

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Now, my Lord Chairman, what are the conclusions that I draw from those facts? The first conclusion that I draw is that the greater part of this six to 10 crores is needed anyhow, whether we make constitutional changes or whether we do not, that the greater part of it is needed for putting the provinces on a self-supporting basis, and that in my view, whether constitutional changes are made or whether they are not, it is urgently necessary in the interests of the Central Government and in the interests of a great province like Bengal to bring to an end a system of finance that leaves Bengal in a state of permanent deficit and allows its finances to get deeper into a hopeless slough.

My Lord Chairman, the second conclusion that I draw from this analysis is that if the state of the world does not get better, if we still go on with commodity prices either at their present level or actually falling, not only does it make any change almost impossible but it makes the existing system of Indian finances almost equally impossible. We shall then have to readjust our whole system of finance in India to meet the state of affairs with which we shall be faced. Let me emphasise this point, that if the state of the world does not improve the problem of the present Government in India is almost as great as the problem of any Federal Government and any autonomous Provincial Governments, and we have got then, in that event, to readjust our ideas to these new conditions. But I would venture to urge that in the meanwhile, my Lord Chairman, the wise course is, first of all, to go on making our plans, to make them as reasonable and as secure as we can, but frankly to admit the fact that if the state of the world does not improve we may have materially to readjust them; and, secondly, I think it is most important to emphasise the fact that, so far as we can see, for quite a number of years to come, there is no orange to divide up in India between the Centre and the Provinces. The fact that does emerge, anyhow, in my mind as definitely as any other is that for some years to come the Central Government, whether it be the present Government or whether it be a Federal Government, will need substantially its present resources if the credit of India is to be maintained and if its financial obligations are to be met. I would, therefore, venture to impress upon my friends amongst the Indian Delegates who particularly represent Provincial opinion at this Conference, that, with the best will in the world, if we are to have a stable Central Government, if Indian credit is to be maintained, and if Indian commitments are to be met, there is no sum at the moment to be divided up amongst the Provinces other than, say, a part of the jute tax or some such payment of that kind for dealing with the very exceptional position of Bengal. In saying this I do not in the least overlook the fact that in any permanent plan for the division of resources it is necessary to bear in mind that the requirements of the Provinces are almost unlimited while their present sources of revenue, and in particular land revenue, are in-expansive, whereas the present central sources of revenue are more elastic heads and the field of expenditure is, in the main, well defined. I would venture to suggest, with deference, my Lord Chairman, that if that conclusion is correct, it points once again to the Provincial Governments using every possible economy in their administration, and (I know very well what great efforts many of them have made) to look at the problem again in view of what I have said and to see whether they cannot still further economise in certain branches of their administration. I think it also points—if I may make this suggestion both to the Committee and to the Delegates—to this, that in all our discussions on which we are going to embark in the whole field of the Constitutional proposals, we should keep constantly

6<sup>o</sup> Julii, 1933.] STATEMENT BY THE SECRETARY OF STATE [Continued.  
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in mind the fact that there is very little money to go round and that we must keep the lowest possible limit on any expenditure that may be needed by Constitutional changes. I think in the course of our discussions we must look with even more meticulous and closer attention to every aspect of the Constitutional proposals from that angle. Now, my Lord Chairman, I have spoken, in the main, in general terms, but I hope I have said enough to show, first of all, that there is very little money to go round; secondly, that if the economic state of the world does not improve we must readjust our views generally to the whole problem of Indian Revenue and Indian expenditure; thirdly, that the main cause of the deficit shown in Sir Malcolm Hailey's Summary is a deficit due, not so much to any Constitutional changes, as to the system of Indian finance generally.

Let me end, my Lord Chairman, by saying, even after painting the picture as blackly as it has been painted, that we can congratulate ourselves upon India, as a whole, being financially—uncertain and black as the picture is that I have just painted—sounder than most of the countries in the world. After all, my Lord Chairman, we are balancing our Budget.

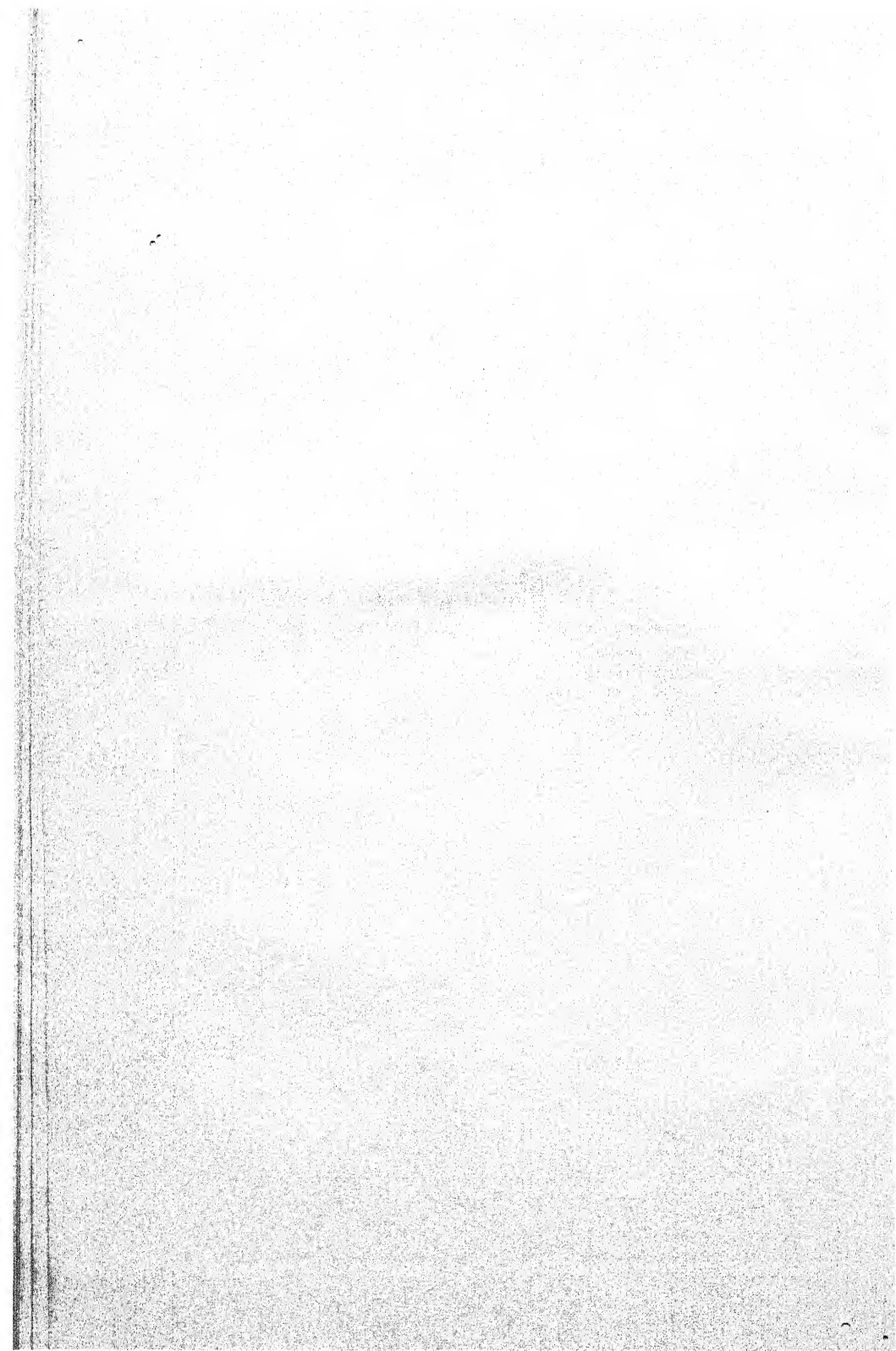
The budgetary position has responded to the great efforts made to deal with the serious deterioration which resulted from the world-wide economic depression. 1932-33, according to the Revised Estimates, closed with a surplus of Rs.2.17 crores; and the Budget for the current year, in spite of a partial restoration of cuts in pay, provides for a small surplus.

The continued improvement which has taken place in the credit of India is evidenced by the fact that, for example, the 4½ per cent. sterling Stock 1950-55, which in September, 1931, was quoted as low as 61, had risen by May, 1932, to 91, and now stands at about 106. Another manifestation of the stronger financial position has been the great progress made, during the last year or so, with the repayment and conversion of short term debt, both rupee and sterling.

After all the efforts that we have made in the Provincial Administrations in the last year we are going, as I believe to show that, at the end of the year, there will be very few Provinces—perhaps no Provinces other than Bengal and Assam—in a state of deficit, and that upon those facts we can well congratulate ourselves. The wise course, I suggest to the Committee to-day, in view of these facts, is that we should keep them constantly in mind, but that they should not debar us from proceeding with our Constitutional plans, and that we should keep in mind the fact that there is no government in the world, either the Indian Government or the British Government, or any other Government, that can accurately say, in the uncertainties of the world, what the state of its finances is going to be in 12 months' time. We must go on hoping that there will be a turn for the better in the world, and we must rely upon the fact that we have always assumed, in our previous discussions in the Round Table Conferences, that we can never make definite estimates until the last moment, and at the last moment there must be an expert Inquiry into the financial position with a view to readjusting that position, if readjustment is necessary, to the conditions of the time.

My Lord Chairman, I hope I have stated, in general terms, the main factors that have impressed themselves upon my mind.





## RECORD II

### Statement made by the Secretary of State for India in regard to Press Reports of his Evidence

MY LORD CHAIRMAN,

I would like to make an observation about what has been happening outside the Committee during the last few days. I have noticed that both in India and here, certain answers that I have given have been taken out of their context, and have been used by our critics to imply that my general attitude is very different from what it really is. I was very conscious of the danger of a situation of this kind when I offered to give evidence to the Committee. Obviously, when I am freely and unreservedly answering questions upon every conceivable detail connected with the Constitution, there may be many isolated answers that I give that might be put into more cautious language. I have purposely adopted the line of telling both Members of the Committee and Indian Delegates exactly what is in my mind, and I have taken the risk of my answers being traduced in this manner. What I wish to say to-day is that I hope every reasonable person outside this Room, whether in India or whether in England, will treat my evidence as a whole, and will not sink to an attempt to make Party capital out of an isolated answer, one way or the other. I feel it necessary to make that statement this morning in view of some of the very gross misrepresentations that have found their way into the Press as a result of our discussions.

*The following observations were then made:—*

Sir Tej Bahadur Sapru: My Lord Chairman, will you just allow me to say one word. I am very glad that Sir Samuel Hoare has made this statement, because during the last few days telegrams have been appearing from India in the London Press which have caused us much anxiety. I do not know in what light the evidence of Sir Samuel Hoare has been represented in India, but it is time that Sir Samuel Hoare did utter that warning, and I am glad that he has uttered that warning this morning.

Mr. Zafarulla Khan: My Lord Chairman, I associate myself with what has been said by Sir Tej Bahadur Sapru. There is not the slightest doubt that we must take the whole of the evidence of the Secretary of State together. He is not nearly half way through his evidence yet. There is also not the slightest doubt that sometimes a series of questions directed only to one aspect of one particular matter are likely to create, when taken by themselves, a particular impression which may not be correct. I have also no doubt that when the time comes we shall place our various points of view before the Committee, and the evidence will then be appreciated in its proper light. In the meantime, I associate myself with the hope that no capital will be sought to be made out of particular portions of the evidence in any way whatsoever, because that would create difficulties for the Committee in the discharge of their onerous duties.

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18° Julii, 1933.] STATEMENT MADE BY THE SECRETARY OF [Continued.  
STATE FOR INDIA.

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Sir Austen Chamberlain: My Lord Chairman, may I add a word? I am sure that the Members of the Committee will desire to express their sympathy with the Secretary of State. The Secretary of State has taken a very unusual and indeed, I think, an unprecedented course in offering himself as a Witness before this Joint Select Committee, and meeting of Indian Delegates. It is a course requiring some courage, but of immense help to the Committee in its deliberations. The Secretary of State, I am sure, will have the support of the Committee, and though I have not the same right to speak for the Indian Delegates, I am sure of their support also in condemning any attempt to twist his answers for ulterior purposes or to represent him as other than he has been throughout—a responsible Minister defending a considered proposal to the best of his ability and with very great success.

## RECORD III

Memorandum by the Secretary of State for India  
describing the nature of the problem which arises  
directly and indirectly in connexion with the  
proposals in the White Paper relating to High  
Courts (paragraphs 168—175 of the White Paper)

### THE JUDICIARY—HIGH COURTS.

(Paragraphs 168-175 White Paper.)

#### INTRODUCTORY.

#### *The Machinery for the Administration of Justice.*

An adequate appreciation of the authoritative position which the High Courts† occupy in the administration of justice in India implies some acquaintance with the organisation of the subordinate civil and criminal judiciary, which is the machine over which they preside. The picture presented is not that of a judiciary composed of individual judges drawn from the Bar and severally responsible for the state of business in their respective Courts. It is nearer the truth to regard the Indian judiciary as an official corps organised under the High Court with the twin objects of securing their judicial independence and maintaining their professional efficiency.

By way of explanation it should be realised that the machinery for the administration of justice in a Province is an organic whole which may conveniently (neglecting local variations) be described by the following table:—

| <i>Criminal side.</i>                 | <i>Civil side.</i>                |
|---------------------------------------|-----------------------------------|
| Magistrates with third class powers.  | Munsifs.                          |
| Magistrates with second class powers. | Subordinate Judges, second grade. |
| Magistrates with first class powers.  | Subordinate Judges, first grade.  |
| District Magistrate.                  | District Judge.*                  |
| Sessions Judge.*                      | High Court.†                      |
| High Court.†                          |                                   |

The High Court both on the criminal and civil side enjoys some original jurisdiction, but the bulk of its work is appellate. The other Courts indicated above are all Courts of first instance, but an appeal lies from the decisions of all third and second-class magistrates to the District Magistrate, from all first-class magistrates (including the District Magistrate) to the Sessions Judge, and from the Sessions Judge to the High Court. Similarly on the civil side an appeal from a Munsif's decision and from those of the lower grade of subordinate judge lies to the District Judge and from the higher grades of subordinate judge and the District Judge to the High Court.

It will be understood that while there is one High Court for each Province, the rest of judiciary as described above is grouped by Districts, each District having a District Magistrate and a District Judge, the former with subordinate magistrates and the latter with subordinate civil judicial officers under his control.

\* The offices of District Judge and Sessions Judge are almost invariably held by one individual, who is commonly described as "District and Sessions Judge."

† For the meaning of the words "High Court" as used in this note, see paragraph 22 below.



27<sup>o</sup> Julii, 1933.]THE JUDICIARY—HIGH COURTS.  
(Paragraphs 168-175 White Paper.)

[Continued.]

*The Subordinate Criminal Judiciary.*

2. The criminal judiciary is constructed on a plan uniform for all British India by an Act of the Indian Legislature (the Code of Criminal Procedure). That Act in its Second Part deals with the Constitution and Powers of Criminal Courts, prescribing the classes of Criminal Courts which shall exist in the Provinces, and assigning powers to each class by specifying in a schedule the offences of which each class of Court may take cognizance. Further powers are assigned by particular Acts, Central and Provincial.

The Code of Criminal Procedure, however, leaves it to the Provincial Governments to provide the personnel required to man the subordinate criminal judiciary. At the stage of Sessions Judge a varying number of appointments are made direct from the Bar, though these have in most Provinces been few in number, but below that stage the personnel is provided (so far as honorary magistrates are not employed) by drawing upon the administrative cadres employed in the Provinces (the Provincial Civil Service). To varying degrees from Province to Province a distinction between officers of these cadres employed upon magisterial duties and those employed upon administrative duties has been drawn; but, generally speaking, the subordinate magistracy is employed also in administrative or revenue work as well as in strictly judicial duties.

The broad result, therefore, is that all magistrates are drawn from departmental cadres, which they enter at the outset of their official career, and through which they pass by rising in due course from grade to grade and within grades, by surmounting various "efficiency bars." Progress depends partly upon seniority and partly upon professional efficiency. The clerical establishment of Criminal Courts is provided by the Provincial Governments from their subordinate services.

*The Subordinate Civil Judiciary.*

3. The Subordinate Civil Judiciary is organised by provincial legislation. The plan is therefore not necessarily uniform from Province to Province. In fact, there is a good deal of uniformity in general arrangement, but there are differences of detail. Certain classes of court are required to be set up. The jurisdiction of each is determined according to the pecuniary value of suits, and that jurisdiction is supplemented by specific Acts which may assign jurisdiction according to other criteria. The provision of personnel to preside over these courts is generally left to the Provincial Government, but in some Provinces for certain courts has been entrusted entirely or in effect to the High Court. But whatever the method, the feature common to all systems is that the personnel compose official cadres into which normally a man enters at the outset of his career and through which he passes over efficiency bars and grade distinctions. The cases in which officers of these services are employed on work other than strictly judicial work are comparatively few.

*Control of the Subordinate Judiciary.*

4. These arrangements are part of a system which recognises that subordinate courts, civil and criminal, in India, while preserving their judicial independence, require a degree of administrative superintendence and control unknown in England. The judge or magistrate in charge of each court makes periodical returns of the state of business in his court, which are reviewed by the District and Sessions Judge and by the District Magistrate at shorter, and by the High Court at longer, intervals. All courts are

27<sup>o</sup> Julii, 1933.]THE JUDICIARY—HIGH COURTS.  
(Paragraphs 168-175 White Paper.)

[Continued.]

regularly inspected, and at least in some Provinces one or more judges of the High Court go on tours of inspection round the courts in the Province. In the course of all this, presiding officers are criticised, commended or reprimanded. There are efficiency bars to be passed and grade promotions awarded. Transfers must be arranged, leave granted and provided for, and there are also matters of discipline.

It will appear later how much of this administrative control, which is very considerable in amount, and very important in nature, is exercised by the High Court. Much of it has been devolved upon the Court by Statute; a great deal is exercised by less formal arrangement with the Provincial Government.

#### THE PROVINCIAL HIGH COURTS.

5. It is convenient to examine the problem of the High Court from three separate standpoints:—

- (i) the establishment of the Court, including its composition;
- (ii) the “jurisdiction, powers and authority of the Court”; and
- (iii) its maintenance—i.e., the financial provision required for the salaries of the Judges, the pay of the Court’s subordinate establishment and the provision and upkeep of its buildings.

The last of these heads will be discussed separately later. The first two broadly cover the field of the Letters Patent under which the High Courts are established, and are to be found stated as well in section 106 of the present Government of India Act.

#### *Composition and Organisation.*

6. The constitution of High Courts is to a certain extent determined by the specific provisions of the present Act, but is also governed by the provisions of Letters Patent. Provisions of the former nature, namely those which lay down the number of Judges and their qualifications, are, broadly, not alterable by any Legislature in India. But the Letters Patent as they stand are by their own terms subject to modification by the Indian Legislature (in the case of Burma by the Provincial Legislature). So far, therefore, as the constitution of a High Court depends upon its Letters Patent, the constitution is variable by Central (in the case of Burma by Provincial) legislation.

7. The effect of entry 28 in List II of Appendix VI of the White Paper is to exclude matters affecting the constitution and organisation of a High Court from the competence of Provincial Legislatures, and there is no entry in List I which puts these matters within the competence of the Federal Legislature, for, as will subsequently be shown, the terms used in item 63 of List I do not cover matters affecting the constitution and organisation of High Courts. Consequently, the proposals of the White Paper, paragraphs 168-175, contain the only provision for the establishment, constitution and organisation of High Courts. These provisions entrust matters of this nature solely to the Act itself or to Letters Patent by the Crown, and consequently give no power to any Indian Legislature to alter the composition or organisation of any High Court as they will be laid down in the new Constitution Act or Letters Patent.

8. The general assumption underlying the proposals in the paragraphs of the White Paper relating to the High Courts is that the existing provisions of the Government of India Act relating to the chartered High Courts (sections 101-118) will for the most part be repeated in substance in the

27<sup>o</sup> Julii, 1933.]THE JUDICIARY—HIGH COURTS.  
(Paragraphs 168-175 White Paper.)

[Continued.]

new Constitution Act without change, except to the extent that changes are indicated in paragraphs 168-175 of the White Paper. Briefly, these changes as proposed, nearly all of which except the last relate to the constitution of the Courts, are as follows:—

(i) That the tenure of Judges shall be during good behaviour instead of during pleasure (paragraph 169 and section 102 (1)).

(ii) That there shall be a fixed age limit of 62 for High Court Judges, instead of the present practice, whereby an undertaking to retire at the age of 60 is obtained from every Judge on appointment, no age limit being fixed by the Act (paragraph 169).

(iii) That every Puisne Judge, or every person qualified to be appointed a Puisne Judge, shall be eligible for the appointment of Chief Justice. The present Act (section 101 (4)) has been legally interpreted as rendering only barristers eligible for the office of Chief Justice (paragraph 170).

(iv) That the existing statutory requirement that at least one-third of the Judges of every High Court must be members of the Indian Civil Service and at least one-third must be barristers is to be abrogated (paragraph 170 and section 101 (4)).

(v) That the salaries, pensions, allowances, &c., of Judges shall in future be fixed by Order in Council instead of as at present by the Secretary of State in Council (paragraph 171 and section 104).

(vi) That Additional Judges\* shall henceforth be appointed by the Governor-General in his discretion instead of by the Governor-General in Council (paragraph 172 and section 101 (2) (i)) and that the same authority shall henceforth have power to fill acting appointments, whether as Chief Justice or Judges, instead of the Local Government (paragraph 172 and section 105).

(vii) That the Governor-General, i.e., the Federal Government, shall take the place of the Governor-General in Council as the authority empowered to transfer areas from the jurisdiction of one High Court to another and to define their jurisdiction over British subjects situated in parts of India outside British India (paragraph 174 and section 109).

#### *Jurisdiction, Powers and Authority.*

9. The phrase "jurisdiction, powers and authority" has a long history reaching back to the Regulating Act of 1773, and it is employed in subsection (1) (a) of section 106 of the present Government of India Act to indicate, along with the power to establish a High Court, the whole scope of Letters Patent. The Letters Patent themselves indicate the distinction which is to be drawn at least between on the one hand "jurisdiction" and on the other "powers and authority": the broad distinction seems to be that "jurisdiction" indicates juridical competence and "powers and authority" administrative. The Letters Patent indicate, for instance, as regards civil jurisdiction, that that is a competence to try and determine, whether originally or on appeal, matters arising in issue between parties. The criminal jurisdiction is a competence to try all persons brought before the Court in due course of law and, of course, to hear appeals from the orders of Courts exercising a subordinate criminal jurisdiction. The Letters Patent, however, do not set out to describe or specify the content of the jurisdiction. The law to be administered by the High Court is left to the

\* Additional Judges are Judges appointed for a period as distinct from permanent Judges of the Court.

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THE JUDICIARY—HIGH COURTS.  
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[Continued.]

competent legislative authority in India, and the scope of the appellate power of the High Court is also left to the operation of existing legislative provision in India or to subsequent provision which in this respect, may hereafter be made by competent legislative authority in India.

#### *Jurisdiction.*

10. The present position is as follows:—

In spite of the existing concurrent jurisdiction of the Legislatures in India, it has been held that the provision in the Letters Patent enabling only the Legislature of the Governor-General in Council to amend Letters Patent excludes the competence of a Provincial Legislature in any matter affecting a High Court's jurisdiction. This, however, is not the position in Burma, where the Letters Patent differ from all others in granting power to the Provincial Legislature to amend the Letters Patent of the Burma Court.

Section 106 of the Government of India Act withdraws from the High Courts original jurisdiction in any matter concerning revenue, or the collection thereof, but even this provision of the Statute is, owing to the operation of the Fifth Schedule of the Act, amendable by the Central Legislature.

#### *Powers and Authority.*

11. The distinction made explicitly or implicitly in Letters Patent between "jurisdiction" on the one hand and "powers and authority" on the other is clear from the nature of the "powers" there given. They include, for instance, powers to appoint officers of the Court itself; powers to admit advocates, vakils and attorneys, and to make rules for their qualification, removal and suspension; powers to regulate their own proceedings; and powers to delegate duties of a judicial, quasi-judicial or non-judicial nature to any Registrar, Prothonotary or Master, or other official of the Court.

But the powers and authority of the High Courts of this nature are much wider than those described in the Letters Patent, and may conveniently be displayed under the following four heads, namely:—

- (i) Powers conferred by the Government of India Act.
- (ii) Powers conferred by Letters Patent.
- (iii) Powers conferred by enactments of the Central Legislature.
- (iv) Powers conferred by enactments of Provincial Legislatures.

(i) The powers conferred by the Government of India Act include those described in its 107th section, "Powers of the High Court with respect to Subordinate Courts." This power has usually been understood to be of a purely administrative nature, but certain High Courts have recently held that it confers upon them a wide juridical competence, and have further pointed out that it is not a power amendable by the Indian Legislature, as it is not included in Schedule V of the Government of India Act. It is the intention on the present occasion to enact the substance of this section, but in such a form as to leave no doubt that it does not confer juridical jurisdiction, but administrative powers.

In Proposal 175, it has been suggested that this authority should be subject to regulation by the Federal Legislature. But the suggestion made in the preceding sentence that the nature and scope of this authority should be laid down once for all in the Constitution Act itself would render a provision of the nature of paragraph 175 unnecessary.



27<sup>o</sup> Julii, 1933.]THE JUDICIARY—HIGH COURTS.  
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[Continued.]

(ii) *Powers and authority conferred by Letters Patent.*—The details of these powers have been indicated above. The White Paper itself contains no provision for amendment of Letters Patent by any authority in India and to this extent withdraws the powers at present enjoyed, in virtue of Schedule V to the Act and the Letters Patent themselves, by the Central Legislature (and in Burma, the Provincial Legislature). Nevertheless, the individual powers and authority enjoyed in virtue of their Letters Patent by the High Courts would be subject to an extent not yet explored to the jurisdiction of Legislatures in India according as they are covered by one entry or another in Lists I, II and III of Appendix VI. For instance, the powers of the High Court under Letters Patent in regard to the admission of advocates, vakils and attorneys would be subject to any competence which might be placed in India to legislate for the constitution and control of the Bar or Bars. Another instance is the High Court's power to delegate functions to Registrars and other officers of its own.

(iii) *Powers conferred by Central legislation.*—Instances of powers of this nature are to be found in the Criminal Procedure Code and particularly, in a very wide form, in the second part of the Civil Procedure Code, and it is presumed for the moment that these powers, as at present, will be subject to the competence of the Federal Legislature or, to the extent to which they fall in List III of Appendix VI, to the concurrent competence of the Federal and Provincial Legislatures.

(iv) *Powers conferred by Provincial Legislatures.*—The most prominent of these powers are those conferred in relation to the subordinate civil judiciary by Provincial Civil Courts Acts in certain Provinces: thus in Madras the civil subordinate judiciary of the Munsif class are appointed and controlled entirely by the High Court; in the Punjab the High Court is given the power to nominate persons for recruitment as Subordinate Judge, which nomination must be accepted by the Local Government. In other Provinces the position with regard to Munsifs is the same as that just indicated with reference to Subordinate Judges in the Punjab. But although, except to the extent just stated, the actual appointment of the civil judiciary rests with the Provincial Government, in nearly every case the opinion of the High Court as to appointment, transfer, promotion, etc., is taken and acted upon by the Local Government.

12. The importance of powers derived from provincial legislation and from the Provincial Governments will be apparent in their relation to the provincial judiciary as an administrative machine to which attention has been drawn in the opening paragraphs of this note. It may be added that by convention also the High Courts are almost invariably consulted in regard to the conferment of certain magisterial powers, such as those under section 30 of the Criminal Procedure Code. In effect, the whole of the civil judiciary and, to the extent indicated in the introductory portion of this note, the criminal judiciary, form an administrative department under the High Courts; they carry out a regular inspection of the Superior District Courts and, in some cases, of the Magistrates' Courts; they prepare the budget and control the contingent expenditure of the Civil Courts; they make recommendations to the Local Government regarding the promotion of the civil judiciary on an examination of their work; they issue a large body of rules prescribing the action of the civil judiciary in a variety of matters such as questions relating to judicial deposits and payment of witnesses. Indeed, the judiciary in India is regarded as constituting a piece of machinery the efficiency of which is maintained by day-to-day control and supervision by the High Court.



27<sup>o</sup> Julii, 1933.]THE JUDICIARY—HIGH COURTS.  
(Paragraphs 168-175 White Paper.)

[Continued.]

13. The maintenance of this control unimpaired is regarded by many as a matter of essential importance. If that view is endorsed by the Select Committee, it will be necessary, in drawing up the Constitution Act and the schedules thereunder, to ensure that the legislative powers to be entrusted in this respect to the Provincial Legislatures are so defined as to safeguard this position.

#### *Maintenance.*

14. The most important aspects of the problem of maintenance of the High Courts are financial. The salaries and other allowances of the judges themselves (proposal 171) will be regulated by Order in Council and will be met by non-voted provision (proposal 98). They, therefore, do not fall within the scope of entry 28 in List II. The more important matters which fall within the scope of that entry are the provision of buildings required for the Court, of the necessary clerical establishment and of the numerous miscellaneous matters classed as "contingencies." The effect of the White Paper proposals would be to leave all these matters to be regulated by the Provincial Legislature and Government, but to enable the Governor (proposal 98, sub-section (3)) to certify, after consultation with his Ministers, the sums required for these expenses of the Courts and thereby to remove them from the vote, but not from the criticism, of the Provincial Legislature.

#### FEDERALISATION OR PROVINCIALISATION.

15. If the question be asked whether the White Paper federalises or provincialises the High Courts, the answer must be given separately under each of the preceding heads under which the incidents of the problem have been described. So far as composition and organisation of High Courts is concerned, the White Paper neither federalises nor provincialises. It removes questions of this nature from the competence of either the Federal or the Provincial Legislature and entrusts them to Parliament by amendment of the Constitution Act, or to the Crown by issue of Letters Patent or Orders in Council.

16. As regards jurisdiction in the sense of juridical competence, the proposal is that the power to regulate juridical jurisdiction should follow the power to regulate the substantive law to be interpreted. This proposal has been accepted by the Governments in India as natural and logical and, indeed, seems to find support in section 5 of the Colonial Laws Validity Act and in general principles\* accepted by the Privy Council.

17. As regards powers and authority, it is proposed to make the general administrative authority of the kind now conferred by section 107 of the Government of India Act neither Federal nor Provincial, but to lay down its nature and scope and to confer it upon the Courts once and for all in the Constitution Act itself. Particular powers and authority will be conferred upon the Court and regulated by the legislative authority which has competence in the matter to which they refer. For instance, all powers and authority which the High Courts may exercise under Provincial Civil Courts Acts will be Provincial; those which they exercise under the Code of Civil Procedure or the Code of Criminal Procedure, both of which fall in List III, will be Provincial or Federal according as the legislation undertaken is that of the Provincial or the Federal Legislature. The powers at present enjoyed by courtesy are, of course, not regulated by the proposals of the White Paper.

\* *Valin v. Langlois*, 5 App. Cas. 115; 49 L.J.P.C. 37.

27<sup>o</sup> *Julii*, 1933.] THE JUDICIARY—HIGH COURTS.  
(Paragraphs 168-175 White Paper.)

[*Continued.*]

18. As regards maintenance, the proposal is that this should be entirely a Provincial matter, but it is proposed, as already stated, to give the Governor a personal authority to certify, after consultation with his Ministers, the amounts which he thinks are required for the expenses of these Courts.

19. These proposals as regards powers and maintenance take account not only of the necessities of administration, but also of the conditions which the new Constitution is likely to set up. In the light of past experience it is suggested that the Federal Government will lack the requisite local knowledge to enable them to discharge the functions now assigned to the Provincial Governments in the case of all High Courts other than the Calcutta High Court. (The relations which have hitherto existed between the Government of India and the Calcutta High Court are due partly to historical reasons and partly to the fact that that Court serves two Provinces.) To restrict the competence to confer power and authority upon High Courts to the Federal Government might well involve a risk of conflict of administrative authority over subordinate Courts between (a) the Provincial Government, which would continue to possess such authority in virtue of its responsibility for the Provincial subject, and of the fact that in the majority of Provinces the Provincial Courts Act vests power of appointment of subordinate judicial officers in the Local Government, and (b) the High Court, which would also continue to possess such authority, but which, with the High Court centralised and with the statutory Letters Patent powers transferred to the Government of India, would cease to have any administrative relations with the Local Government. The present system of provincialisation has worked well in the past and has proved itself appropriate to the varying constitutional conditions. Finally, it might reasonably be held that since the administration of justice is essentially a Provincial subject, the Courts which administer it should be in relation with the Provincial executive authority.

20. It is further for consideration whether, if the High Courts were to be federalised, the Provincial Governments of the future would be content to allow them to remain in possession of the power and authority over the subordinate judiciary of the Province at present conferred by Provincial legislation or as the result of arrangements with Provincial executives. This is a consideration which cannot be ignored, for if the administration of the subordinate judiciary were removed from the High Court it would necessarily fall to the charge of a Minister directly responsible to the Legislature.

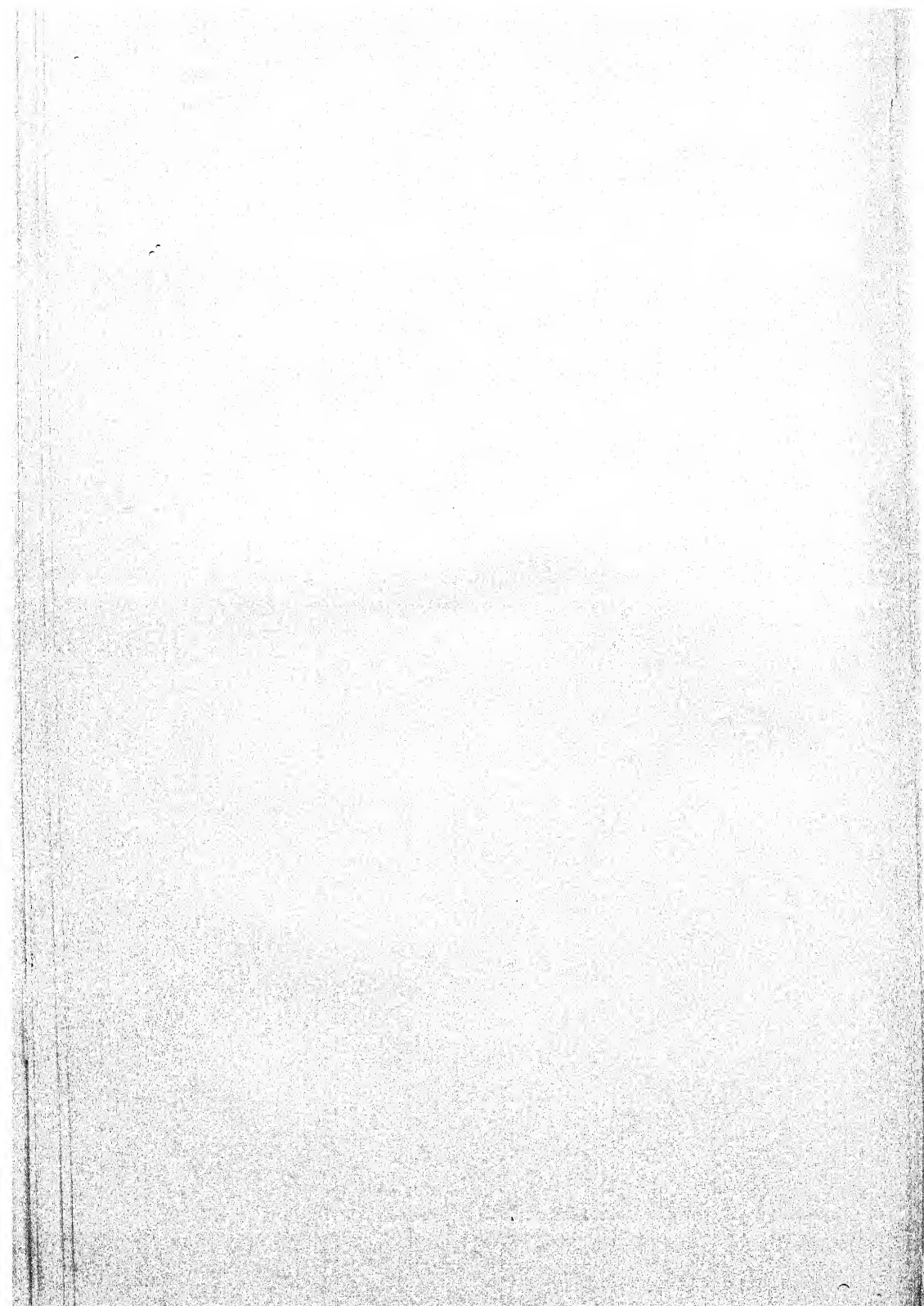
21. On the point of maintenance it is sometimes assumed that the federalisation of civil and criminal justice would not involve additional expenditure on the Centre, since the receipts on this head balance expenditure. Enquiries made from time to time, however, show that this is not correct when all expenditure of every kind on this head is taken into account, and in any case this measure would involve complicated financial adjustments ranging not only over Court fees, but stamps and Public Works expenditure. The administrative functions of the High Court involve control over a considerable range of expenditure in regard to subordinate establishments, Court buildings, and the like, and it has been represented with much force that these arrangements can best be effected in relation to the Local Government, instead of bringing them within the purview of the Central Government, which would not have the necessary knowledge, or could, in turn, only acquire that knowledge through reference to the Local Government itself.

27<sup>o</sup> Julii, 1933.]THE JUDICIARY—HIGH COURTS.  
(Paragraphs 168-175 White Paper.)

[Continued.]

## “HIGH COURTS,” OTHER THAN CHARTERED HIGH COURTS.

22. The foregoing paragraphs of this note have reference primarily to the High Courts referred to in the Government of India Act (section 101 (1) ), that is, to High Courts of Judicature established by Letters Patent, commonly known as the Chartered High Courts. But such Courts do not exist in every Province; in a few Provinces the highest Court of criminal or civil appeal, though not a Chartered High Court, exercises the appellate and revisional powers of such a Court. These include the Courts of the various Judicial Commissioners and the Chief Courts. The observations in this note are to some extent applicable also to “High Courts” of this description, but not those which refer to constitution and organisation, to the general administrative power derived from section 107 of the Government of India Act, nor, of course, those relating to the powers conferred by Letters Patent. The position of non-chartered “High Courts” in relation to these matters will require consideration when the exact scope of the provision to take the place of paragraph 175 of the White Paper, and the prewise extent of item 28 in List II of Appendix VI, come under examination. For the present the nature of the problems which arise in connection with the Judiciary are most conveniently presented from the angle of the Chartered High Courts.





## RECORD III—(contd.)

### Memorandum by the Secretary of State for India on the Proposals for the future Administration of Indian Railways

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In paragraph 74 of the Introduction to the White Paper it was stated that His Majesty's Government considered it essential that while the Federal Government will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Body so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference.

The paper entitled "Sketch Proposals for the Future Administration of Indian Railways," which I now circulate, is the outcome of the deliberations of a Committee which I recently appointed to consider a scheme which I had prepared in consultation with the Government of India to give effect to these principles. The Committee was very representative, containing as it did seven members of the Indian Legislature who came to England specially for this purpose; five of the delegates to the Joint Select Committee, of whom two were representatives of the Indian States; four eminent railway experts, two with special knowledge of Indian railways; while the remaining six members were possessed of wide administrative, financial or commercial experience.

2. I venture to think that the proposals set out in this paper are, broadly speaking, conceived on sound lines, and it is gratifying that so large a measure of agreement has been reached. In regard, however, to the vital question of the method of appointing the Railway Authority (paragraph 2 of the Proposals) a distinct cleavage of opinion emerged.

One section of the Committee recommended that all the members of the Authority should be appointed by the Federal Government; the rest of the Committee, while agreeing that four out of the seven members should be appointed by the Federal Government, considered it necessary that the other three should be appointed by the Governor-General in his discretion. I do not favour the former view as I consider that such an arrangement might conflict with the fundamental principle that the Authority should be entirely free from political influence, and I would be unwilling to go further than to allow four out of the seven members of the Railway Authority to be appointed by the Federal Government. As for the proposal that the Authority should be established on a communal basis laid down by Statute, while I sympathise with the anxieties which have prompted this proposal I regret that I cannot support it. If such a precedent were set in this case it would be difficult to refuse to follow it in other cases; and apart from the probability that no Federal Government could afford to disregard the claims of the minority communities if qualified persons be available, the reservation of three appointments in the hands of the Governor-General himself would serve to ensure that the Authority was representative, subject always to the governing consideration that no person should be appointed who did not possess the qualifications laid down in paragraph 2 of the Proposals.

3. I invite special attention to the foot-notes to paragraphs 11 and 12 regarding the position of railways in the Indian States. These notes raise an important constitutional issue which the representatives of the Indian States will no doubt explain to the Joint Select Committee.

27<sup>o</sup> Julii, 1933.]PROPOSALS FOR THE FUTURE  
ADMINISTRATION OF INDIAN RAILWAYS.

[Continued.]

4. The Sketch Proposals refer specifically in paragraph 8 to the special responsibilities of the Governor-General in so far as they may extend to the recruitment and service conditions of railway personnel. It will be understood, however, that this does not exhaust the scope of his responsibilities in the matter of railway administration, particularly with regard to defence requirements. The governing principle laid down in paragraph 1 of the Proposals is that railway policy is to be controlled by the Federal Government and the Legislature; and where defence requirements may be concerned the authority of the Federal Government will reside in the Governor-General by virtue of his special responsibility in respect of any matter affecting the administration of the Reserved Department of Defence. In this regard, therefore, he will be in a position to give directions to the Railway Authority as to the exercise of their functions.

5. There remains to consider the important question whether a Statutory Railway Authority should be set up by British or by Indian legislation. As I see the position there appear to be four courses open:—

(1) An Act might be passed in the present Indian Legislature and the necessary adaptation to the new Constitution made in the Constitution Act itself.

(2) The Constitution Act itself might contain provisions, complete in all details.

(3) The Constitution Act might lay down the general principles on which legislation should be based, it being left to the new Indian Legislature to legislate in detail in conformity with those principles.

(4) The matter might be left entirely to the new Indian Legislature with a reservation that the approval of the Governor-General in his discretion would be required to the introduction of the original Bill, or of any amending Bill.

In any event it will be necessary to ensure that a Statutory Railway Authority shall be set up on right lines.

In any case it would be necessary to preserve in the Constitution Act the existing rights which the Indian Railway Companies possess under contracts entered into with the Secretary of State in Council.

## RECORD III—(contd.)

### Sketch Proposals for the Future Administration of Indian Railways

1. Subject to the control of policy by the Federal Government and the Legislature, a Railway Authority will be established and will be entrusted with the administration of railways in India (as described in paragraph 4) and will exercise its powers through an executive constituted as described in paragraph 3.

2. The Railway Authority will consist of seven members. The Committee is divided on the question whether (a) three will be appointed by the Governor-General in his discretion and four by the Governor-General on the advice of the Federal Government or (b) all will be appointed by the Governor-General on the advice of the Federal Government. Those members of the Committee who are members of the Central Legislature, with the exception of Mr. Anklesaria, support the latter alternative. All the Hindu and Muslim members of the Central Legislature on the Committee agree that out of the seven seats on the Railway Authority two should be reserved for the Muslim community and one for the European community. Sir Phiroze Sethna, Mr. Anklesaria, Sir Manubhai Mehta and the European members of the Committee, while they would welcome an authority representative of all interests and all communities so far as is compatible with efficiency, do not consider that any special provision should be made in the statute for the establishment of the Railway Authority on a communal basis. The seven members so appointed must be possessed of special knowledge\* of commerce, industry, agriculture or finance, or have had extensive administrative experience. The President† of the Authority, who shall have the right of access to the Governor-General, will be appointed from the members by the Governor-General in his discretion.

The Federal Minister responsible for Transport and Communications may at any time convene a special meeting of the Railway Authority for the purpose of discussing matters of policy or questions of public interest. At such meetings the Federal Minister will preside. The Federal Minister may by order require or authorise the Railway Authority to give effect to decisions of the Federal Government and the Legislature on matters of policy, and it shall be obligatory on the Railway Authority to give effect to such decisions.

No Minister or member of the Federal Legislature or any other Legislature in India will be eligible to hold office as a member of the Authority till one‡ year has elapsed since he surrendered his office or seat, nor will

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\* Mr. Joshi would add "knowledge of public affairs."

Mr. Joshi considers that two seats on the Railway Authority should be specially reserved for representatives of Labour and the travelling public.

Mr. Joshi and Dr. Ahmad consider that if the Authority is to consist of a whole-time Chairman and part-time members, the number should be increased.

Mr. Joshi and Mr. Anklesaria consider that special representation should be given to agriculturalists on the Railway Authority.

† Mr. Joshi and Mr. Ranga Iyer consider that the appointment of President should be made on the advice of the Federal Government.

‡ Mr. Joshi and Mr. Yamin Khan hold the view that in regard to the membership of a Legislature the year's disqualification should not apply, but that any member of a Legislature appointed to the Railway Authority will *ipso facto* vacate his seat.

27<sup>o</sup> Julii, 1933.]

SKETCH PROPOSALS FOR THE FUTURE  
ADMINISTRATION OF INDIAN RAILWAYS.

[Continued.]

any person be appointed as a member of the Authority who has been a servant of the Crown in India, a railway official in India, or has personally held railway contracts, or has been concerned in the management of companies holding such contracts, within one year of his relinquishment of office or of the termination of the contract as the case may be. The Federal Minister responsible for Transport and Communications may, if he sees fit, attend the ordinary meetings of the Authority or be represented thereat, but in neither case will there be the right to vote. The members of the Authority will hold office for five years, but will be eligible for reappointment for a further term of the same length or for a shorter term. (In the case of the first appointments, three will be for three years only, but these members will be eligible for re-appointment for a further term of three or five years.)

Any member of the Authority may be removed from office by the Governor-General in his discretion if, in his opinion, after consultation with the Federal Government, there is sufficient cause for such action.

Members shall be appointed to the Railway Authority who are prepared to give their services to such an extent as may be required for the proper performance of their duties as laid down in the Statute.\* Their emoluments shall be such as to secure suitable men who will be prepared to devote sufficient time for the proper discharge of their duties and responsibilities and will be fixed by the Governor-General in his discretion after consultation† with the Federal Government, the emoluments of the members of the first Railway Authority being fixed in the Statute.

3. At the head of the railway executive there will be a Chief Commissioner, who must possess expert knowledge of railway working and will be appointed by the Railway Authority subject to the confirmation of the Governor-General.‡ A Financial Commissioner will be appointed by the Governor-General on the advice of the Federal Government. He must possess extensive financial experience and have served for not less than 10 years under the Crown or have shown outstanding capacity in the conduct of the financial affairs of commercial or railway undertakings. The Railway Authority, on the recommendation of the Chief Commissioner, may appoint additional Commissioners, who must be chosen for their knowledge of railway working. Except in matters relating to Finance the Chief Commissioner shall have power to overrule his colleagues. The Chief Commissioner will carry out the duties from time to time delegated to him by the Railway Authority and may delegate such powers to his subordinate officers as may be approved by the Railway Authority.

4. The Railway Authority will be responsible for the proper maintenance and efficient operation of the railways vested in the Crown for the purposes of administration (including those worked by Companies), all of which will remain vested in the Crown for the purposes of the Federal Government. The Railway Authority will also exercise the control over other railways in British India at present exercised by or on behalf of Government.

\* Mr. Ranga Iyer, Mr. Padshah, Mr. Joshi, Dr. Ahmad and Mr. Yamin Khan are of opinion that the members should be "whole time" while the other members of the Committee consider that the Committee's recommendation does not exclude the appointment of whole-time members, should experience prove this to be necessary.

† Mr. Joshi and Mr. Ranga Iyer hold that "in his discretion after consultation with" should read "on the advice of."

‡ Mr. Joshi would add "and the Federal Government."



27<sup>o</sup> Julii, 1933.] SKETCH PROPOSALS FOR THE FUTURE [Continued.  
ADMINISTRATION OF INDIAN RAILWAYS.

Provision will be made for safeguarding the existing rights of Companies working under contracts with the Secretary of State in Council, and it will be the duty of the Railway Authority to refer to the Secretary of State any matters in dispute with the Companies which, under the terms of those contracts, are subject to the decision of the Secretary of State in Council or which may be referred to arbitration. It will be obligatory on the Railway Authority and the Federal Government to give effect to the decision of the Secretary of State or the award of an arbitrator.

5. In exercising the control vested in it, the Railway Authority will be guided by business principles, due regard being paid to the interests of agriculture, industry and the general public and to Defence requirements. After meeting from receipts the necessary working expenses (including provision for maintenance, renewals, depreciation, bonus and interest on Provident Funds, interest on capital and other fixed charges, payments to Companies and Indian States under contracts or agreements) the surplus will be disposed of in such manner as may be determined from time to time by the Federal Government under a scheme of apportionment running for a period of not less than five years. In the event of a dispute as to the adequacy or otherwise of the allowance to be made in respect of renewals and depreciations the Auditor-General shall be the deciding authority. Pending any new scheme of apportionment the disposal of any surplus will be governed by the arrangements in force at the time the Authority is established.

6. The Railway depreciation, reserve and other funds should be utilised solely for railway purposes, and be treated as far as possible as the property of the Railway Authority. The investment of such funds and the realisation of such investments by the Railway Authority shall be subject to such conditions as the Federal Government may prescribe. A Committee might be convened in India to advise what those conditions should be.

7. Revenue estimates will be submitted annually to the Federal Government, which will in turn submit them to the Federal Legislature, but these estimates will not be subject to vote. If the revenue estimates disclose the need for a contribution from general revenues, a vote of the Legislature will, of course, be required. The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature. The Federal Government may, however, empower the Railway Authority to incur capital expenditure subject to conditions to be prescribed.

8. The Railway Authority will be empowered, subject to the powers of the Governor-General in the exercise of his special responsibilities, and subject to the safeguarding of the rights of all officers in the service at the time of the establishment of the Railway Authority, to regulate by rules or by general or special order the classification of posts in the railway services on State-worked lines in British India, and the methods of recruitment, qualifications for appointment to the service, conditions of service, pay and allowances, Provident Fund benefits, gratuities, discipline and conduct of those services; to make such delegations as it thinks fit, in regard to appointments and promotions, to authorities subordinate to it; and to create such new appointments in the State Railway Services in British India as it may deem necessary or to make to authorities subordinate to it such delegations as it thinks fit in regard to the creation of new appointments. In its recruitment to the railway services the Railway Authority shall be required to give effect to any instructions that may be laid down to secure the representation of the various communities in

27<sup>o</sup> Julii, 1933.] SKETCH PROPOSALS FOR THE FUTURE [Continued.  
ADMINISTRATION OF INDIAN RAILWAYS.

India. In regard to the framing of rules to regulate the recruitment of the Superior Railway Services the Public Service Commission\* shall be consulted. Any powers in regard to matters dealt with in this paragraph at present exercised by the Government of India over Company-managed railways shall in future be exercised by the Railway Authority.

9. The Railway Authority will at all times furnish the Federal Government with such information as that Government may desire, and will publish an Annual Report and Annual Accounts. The Accounts of the State-owned lines in British India will be certified by or on behalf of the Auditor-General.

10. Should any question arise involving a conflict of interest between the various authorities in British India responsible for railways, waterways and roads as competitive means of transport, a Commission will be appointed by the Governor-General to ascertain the views of all the interests concerned and to report, with recommendations, to the Federal Government, whose decision shall be final. The Commission shall consist of one independent expert of the highest standing and experience in transport matters, with whom will be associated, at the discretion of the Governor-General, two or more assessors.

11. The Federal Government shall lay down regulations for safety on all the Indian railways and one of the Departments of the Federal Government, other than that responsible for Transport and Communications, shall be responsible for the enforcement of such regulations, subject, in the case of the Indian States, to the provisions of their respective Instruments of Accession.

In regard to the railways referred to in paragraph 4,† maxima and minima rates and fares shall be fixed by the Railway Authority subject to the control of the Federal Government. Any individual or organisation having a complaint against a railway administration under the control of the Railway Authority in respect of any of the matters which may, at present, be referred by the Railway Department to the Railway Rates Advisory Committee, may have the matter referred, under such conditions as the Federal Government may prescribe, to an Advisory Committee to be appointed by the Federal Government. Before the Federal Government passes any order on a recommendation of the Advisory Committee it shall consult the Railway Authority.

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\* Mr. Joshi and Mr. Padshah consider that the Public Service Commission should be consulted in regard to the recruitment of both the Superior and Subordinate Services to the extent practicable.

Sir Muhammad Yakub considers that the Public Service Commission should be utilised in making appointments as far as practicable.

† Mr. Mudaliar and Mr. Joshi hold that the restriction under this clause to railways in British India conflicts with the provisions contained in the White Paper on the subject.

Mr. Ranga Iyer considers that the present powers exercised by the Government of India over all railways in Indian States should be exercised by the Railway Authority under the Federal Government.

It was represented on behalf of the Indian States that separate arrangements would be required for railways owned by Indian States, and accordingly no provision has been made for such railways in the scheme except to some extent under safety (paragraph 11, sub-paragraph 1) and again under arbitration (paragraph 12).

27° *Julii*, 1933.] SKETCH PROPOSALS FOR THE FUTURE [Continued.  
ADMINISTRATION OF INDIAN RAILWAYS.

12.† Provision should be made for the reference, at the request of either the Railway Authority or the Administration of a railway owned by an Indian States, of disputes in certain matters such as the construction of new lines, the routing and interchange of traffic and the fixation of rates, to arbitration by a tribunal consisting of one nominee of each party and a chairman approved by both parties. The decision of the committee should be final and binding on both parties. Should the parties be unable to agree on the nomination of a chairman, he shall be nominated by the Governor-General in his discretion.

The arrangements should be such as not to prejudice the position of the Federal Court as the interpreter of the Constitution and Constitutional documents.

CAMPBELL RHODES,  
*Deputy Chairman.*

N. N. ANKLESARIA.

E. A. S. BELL.

H. P. BURT.

HUBERT M. CARR.

F. D. HAMMOND.

A. HYDARI.

N. M. JOSHI.

L. J. KERSHAW.

R. A. MANT.

MANUBHAI N. MEHTA.

J. MILNE.

ROBT. MOWBRAY.

S. M. PADSHAH.

A. A. L. PARSONS.

A. RAMASWAMI MUDALIAR.

C. S. RANGA IYER.

PHIROZE SETHNA.

T. SMITH.

MOHAMMAD YAKUB.

MOHD. YAMIN KHAN.

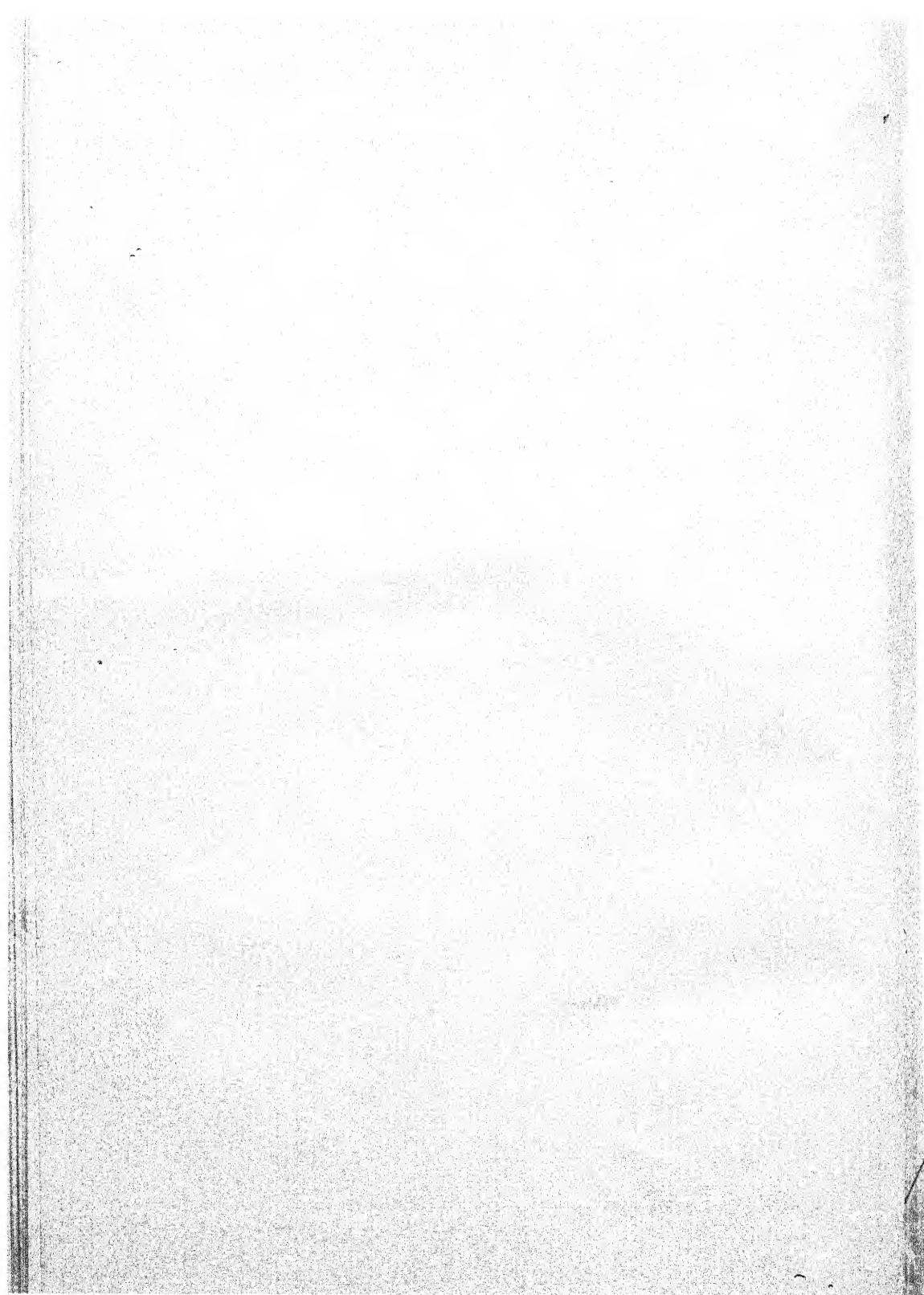
ZIA UDDIN AHMAD.

A. T. WILLIAMS,  
*Secretary.*

Sir Cecil Kisch, who was appointed to the Committee, was not able to take part in its discussions owing to his preoccupations in connection with the World Economic Conference. He has, therefore, not signed the proposals.

India Office,  
21st July, 1933.

† Mr. Mudaliar and Mr. Joshi dissent from the proposals in this clause as antagonistic to the proposals in the White Paper.





## RECORD III—(contd.)

### Memorandum by the Secretary of State for India in regard to the Instrument of Instructions of the Governor-General or Governors

1. There seems to have been some misapprehension as to our intentions with regard to the Instrument of Instructions of the Governor-General or Governors and I should like to describe briefly what I conceive to be the purpose and function of that Instrument in relation to the Constitution Act.

2. In the United Kingdom executive power and authority is, broadly speaking, vested in the Monarch. This is almost as true to-day as it was 200 years ago; but constitutional usage and practice has in process of time materially affected the *manner* of its exercise, without altering the strictly legal position. Thus the Crown could remit to-morrow the sentence of every person imprisoned at this moment in a United Kingdom gaol, and the remissions would all be legally valid; but a sentence is not in fact remitted save on the advice of a responsible Minister, who would be accountable to Parliament for the action taken on his advice.

3. In the British Dominions beyond the seas the relations between the Governor-General or Governor, as the King's representative, and his Council of Ministers in respect of the exercise of the executive powers vested in him by law are governed by his Instrument of Instructions, which in this respect takes the place of the unwritten usage and practice in the government of the United Kingdom. Such Instructions are susceptible of infinite variation, according to the stage of constitutional development with which they are intended to deal. They may, for example, direct the Crown's representative either to exercise his powers entirely at his own discretion, consult a body of Councillors but not necessarily to follow their advice, or to be guided by the advice of Ministers in certain matters though not in others, or to act in all matters on Ministers' advice.

4. The Instrument of Instructions thus does not itself confer any powers. It neither defines nor creates *legal* rights and obligations. It lays down the *manner* in which the Crown's representative is to exercise the powers vested in him by law. And it is to the Crown and to Parliament alone, and not to the Courts, that the Governor-General or Governor is accountable for any breach of his Instructions—an accountability which in the last resort could be enforced by his removal from office.

5. In the White Paper we have adopted this well-known constitutional device. Executive power and authority will be vested by the Constitution Act in the Governor-General in the case of the Federation, and in the case of the Provinces in the Governor; and the Governor-General and Governor will each be given an Instrument of Instructions directing him as to the manner in which he is to exercise those powers. The Instrument will direct him to be guided by the advice of his Ministers in all matters with regard to which they are competent under the Act to advise, unless to be so guided would in his opinion (and his opinion must necessarily be conclusive on this point) be inconsistent with the fulfilment of any of the "special responsibilities" which we propose should be imposed upon him by the Act itself. The Instrument of Instructions will deal with other matters as well, but at the moment I confine myself to the basic matter I have just mentioned.

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27<sup>o</sup> Julii, 1933.] INSTRUMENT OF INSTRUCTIONS OF THE  
GOVERNOR-GENERAL OR GOVERNORS.

[Continued.]

6. In one respect the White Paper breaks new ground. We propose that Parliament should be associated both with the original Instruments and with any subsequent amendments to them. Parliament is entitled in our view to satisfy itself, first, that the original Instruments of Instructions are consistent with the intentions of Parliament when it enacted the new Constitution; and, secondly, that any constitutional change made hereafter by means of an amendment of the Instruments can only be made with its knowledge and approval. In our opinion provisions for this purpose are essential if the responsibility of Parliament for the future constitutional development of India is to be maintained unimpaired.

7. It will be remembered that the Instructions are those of the Crown to its representatives, and I have been thinking over what was said the other day by Lord Rankeillour as to the manner in which the approval of Parliament should be secured. On further consideration I am disposed to think that the method which I understand him to propose, viz., an Address to the Crown, is the best and the most appropriate. I would accordingly suggest to the Committee that provision should be made whereby the Crown would communicate a draft of the proposed Instructions to Parliament and Parliament would subsequently present an Address praying that the Instrument may be issued either in the terms of the draft or with such omissions, additions or alterations as may be suggested; and the Crown would not take action until the Address had been received. A similar procedure would be followed in the case of any amending Instructions which might be issued hereafter.

8. I have only to add this. Paragraphs 20 and 72 of the White Paper speak of the Governor-General and Governor acting "in accordance with such directions, if any, as may be given to him" by the Secretary of State. This, of course, refers to *ad hoc* directions which may be given by the Secretary of State from time to time to meet particular contingencies. The Instrument of Instructions itself can only lay down general principles; but we make it clear in the same paragraphs that any *ad hoc* directions must not be inconsistent with those principles. A member of the Committee inquired a few days ago what would happen if the Secretary of State gave directions which were in fact inconsistent with the principles laid down in the Instrument of Instructions. I can only reply that Parliament could, and I have no doubt would, hold him strictly to account if he thus presumed to disregard the provisions of the Act.

## RECORD III—(contd.)

Memorandum by Secretary of State for India being an Estimate of increased expenditure on fresh "over-head charges" necessitated by the White Paper Constitution (viz., increased cost of legislatures, elections, etc.)

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### CENTRE.

*Lakhs*  
*per annum.*

|  |     |     |     |     |     |     |      |
|--|-----|-----|-----|-----|-----|-----|------|
| Annual additional cost of elections (assuming a general election every three years)*             | ... | ... | ... | ... | ... | ... | 4.0  |
| Annual additional cost of enlarged Legislature   | ... | ... | ... | ... | ... | ... | 39.0 |
| Annual cost of Federal Court   | ... | ... | ... | ... | ... | ... | 4.6  |
| Annual addition on account of salaries of Counsellors, Financial Adviser and staff               | ... | ... | ... | ... | ... | ... | 5.0  |
| Contingencies (including possible reconstruction of New Delhi for summer session of Legislature) | ... | ... | ... | ... | ... | ... | 25.0 |
| Total  |     |     |     |     |     |     | 77.6 |

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\* The maximum statutory life of the Provincial and Federal Lower Chambers is five years. It is impossible to say what will be the actual average life, but three years has been arbitrarily assumed for the purpose of these estimates.

27<sup>o</sup> Julii, 1933.] ESTIMATE OF INCREASED EXPENDITURE ON FRESH [Continued.  
 "OVERHEAD CHARGES" NECESSITATED BY THE WHITE PAPER CONSTITUTION.

| PROVINCES.  |   |  |  |  |
|---|---|--|--|--|
| Province.   | Number of<br>elected members<br>of Legislature.<br>Present<br>Proposed. | Increased<br>cost of<br>Legislature.<br>Lakhs. | Ministers'<br>salaries<br>P.S.C.'s, etc.<br>Lakhs. | Extra cost of<br>each general<br>election.<br>Lakhs. |
| Madras ... ..   | <div>98</div> <div>215</div> <div>86</div>                              | 1.25   | .70  | 10.00  |
| Bombay ... ..   | <div>175</div> <div>114</div> <div>250</div>                            | 0.50   | 1.70   | 10.00  |
| Bengal* ... ..  | <div>100</div> <div>228</div> <div>71</div>                             | 1.75   | 1.25   | 11.00  |
| United Provinces*   | <div>175</div> <div>76</div> <div>152</div>                             | 3.0  | 5.00   | 8.00   |
| Punjab ... ..   | <div>55</div> <div>112</div> <div>39</div>                              | 2.0  | .89  | 6.25   |
| Bihar* ... ..   | <div>108</div> <div>34</div> <div>50</div>                              | 2.65   | .87  | 4.00   |
| Central Provinces   |   | 0.62   | 1.02   | 2.60   |
| Assam ... ..  |   | 0.50   | .60  | 1.50   |
| N.W.F.P. ... ..   |   | 0.25   | .30  | .50  |
| Total ... ..  |   | 12.52  | 12.33  | 53.85  |
|   |   | 24.85  |  |  |
| Estimated annual cost of separation<br>of Orissa† ... ..  |   | 15.0   |  |  |
| Estimated annual cost of separation<br>of Sind† ... ..  |   | 10.26  |  |  |
| Annual cost of provincial elections,<br>assuming three years as average<br>life of legislatures‡ ... .. |   | 17.95  |  |  |
| Interest on capital cost of new<br>buildings, etc. ... ..   |   | 2.25   |  |  |
| Total annual recurring cost:  |   |  |  |  |
| Provinces ... ..  |   | 70.31  |  |  |
| Centre ... ..   |   | 77.60  |  |  |
| TOTAL ... ..  |   | 147.91 = £1,109,000 per annum.                 |  |  |

\* Includes cost of a second chamber. *Separate* estimate for the second chamber is available only in the case of Bihar (30 members) where it is estimated to be .88 lakhs per annum.

† Fresh overhead charges only. This does not include the amount necessary to cover the estimated deficits in these new provinces.

‡ The maximum statutory life of the Provincial and Federal Lower Chambers is five years. It is impossible to say what will be the actual average life, but three years has been arbitrarily assumed for the purpose of these estimates.



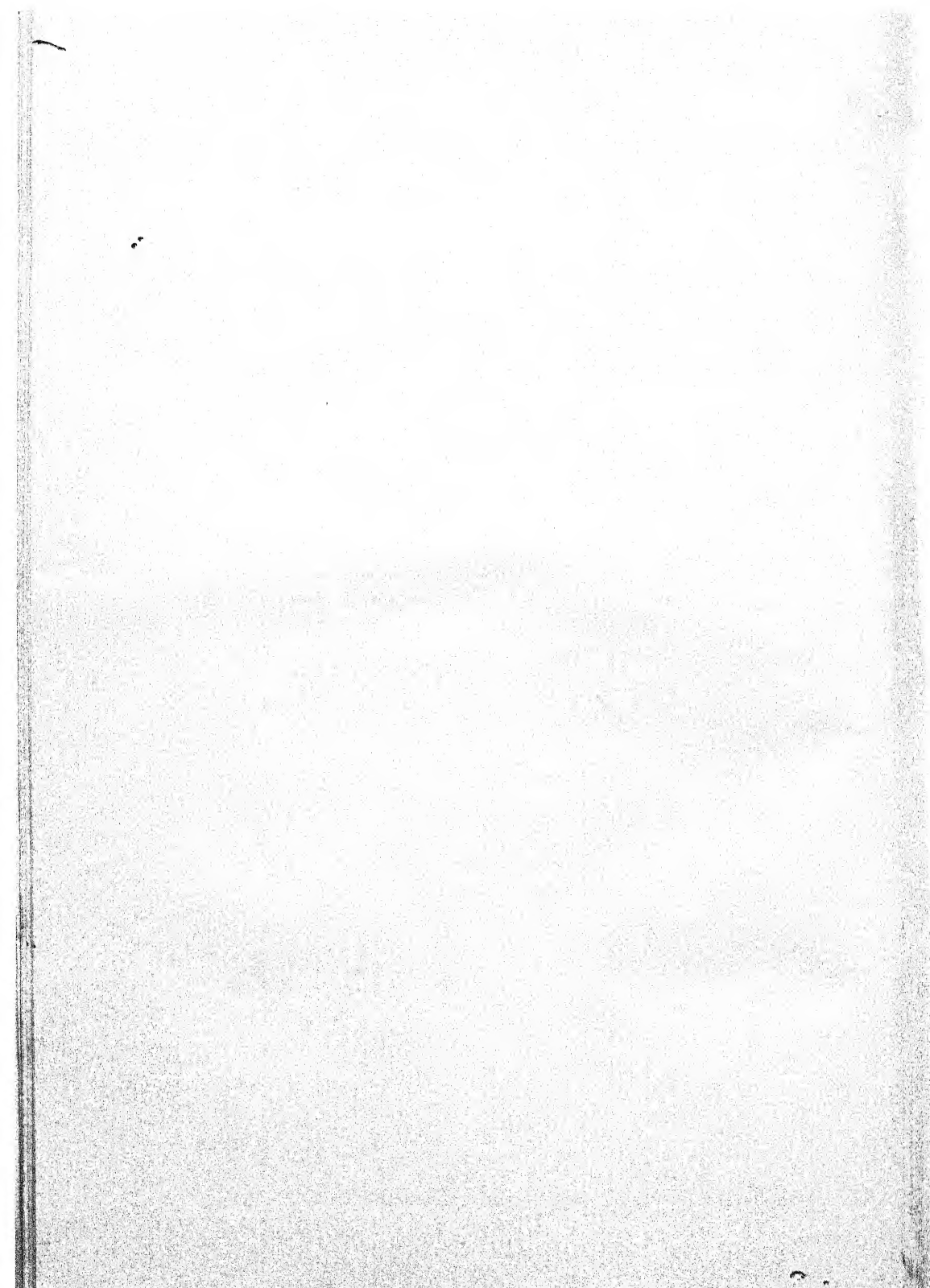
27<sup>o</sup> *Julii*, 1933.] ESTIMATE OF INCREASED EXPENDITURE ON FRESH *[Continued.*  
 "OVERHEAD CHARGES" NECESSITATED BY THE WHITE PAPER CONSTITUTION.

## CAPITAL CHARGES FOR NEW BUILDINGS, ETC.

## PROVINCES.

|                   |     |     |     |     |     |     |     |     |      |
|-------------------|-----|-----|-----|-----|-----|-----|-----|-----|------|
| Madras            | ... | ... | ... | ... | ... | ... | ... | ... | 1.5  |
| Bengal            | ... | ... | ... | ... | ... | ... | ... | ... | 6.6  |
| Punjab            | ... | ... | ... | ... | ... | ... | ... | ... | 1.5  |
| Central Provinces | ... | ... | ... | ... | ... | ... | ... | ... | .5   |
| Sind              | ... | ... | ... | ... | ... | ... | ... | ... | 7.0  |
| Orissa            | ... | ... | ... | ... | ... | ... | ... | ... | 28.0 |
| Total             |     |     |     |     |     |     |     |     | 45.1 |

Interest at 5 per cent. (2.25 lakhs) has been included in the total annual cost above.



## RECORD IV

### Scheme of Constitutional Reform in Burma if separated from India

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MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA.

In accordance with the undertaking that I gave to the Joint Select Committee on the 21st July, I circulate herewith to my colleagues of the Committee and to Delegates a Memorandum setting out in some detail, on the model of the Indian White Paper, the nature of the proposals that would form the basis of the Bill that would be required if it were decided to separate Burma from India and give her a Constitution on the lines sketched by the Prime Minister in his statement of the 12th January 1932, at the close of the Burma Conference.\* Should the Committee take the view that Burma should be included in the Indian Federation the proposals of the Indian White Paper, subject to some consequential adjustments, would apply to Burma in the same way as to any other Province.

So far as the proposals in the Memorandum now circulated amplify or supplement the Prime Minister's statement, they either reproduce, *mutatis mutandis*, provisions to be found in the Indian White Paper, or they deal with matters in respect of which the separation of Burma would inevitably require modification of the White Paper proposals, or render additional provisions necessary. Provisions of this kind have been tentatively and provisionally inserted for the sake of completeness. Lastly, there are certain matters in respect of which the Indian White Paper contains definite proposals, but where it may be necessary to introduce modifications in the case of Burma which have not yet been worked out in detail. Such matters have been indicated in the Memorandum, but no alternative proposals have for the time being been made. In due course I will state my views on points of this kind.

I should like to make it plain that, unlike the Indian White Paper, this Memorandum does not contain recommendations which His Majesty's Government specifically advise should be adopted. As I have indicated above, it is a first sketch of the main lines of a possible Constitution if Burma is separated from India. I reserve to myself the right, when the time comes to discuss it, to suggest amendments on details which seem to me to be better suited to the conditions of Burma.

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\* See Command Paper 4004/32.

I may, perhaps, remind the Committee that it was not possible to make any provision for Burma in the Indian White Paper because at the time that document was framed we were still awaiting an expression of opinion from the Burma Legislative Council for or against the separation of Burma from India. The Committee will recollect that following the Prime Minister's statement at the conclusion of the Burma Conference the choice as between separation and federation was left to the Burma Legislative Council after an election at which this question was made the main issue. I would not propose now to go into details of the election campaign or of the proceedings of the Council in the session immediately following the election and in the special session summoned in April last at the request of the party leaders. I would simply say that, although registering emphatic opposition to federation with India on the same terms as any other Province—the only federation terms which could be offered to Burma—the Council has refused to choose separation on the basis of the Constitution outlined by the Prime Minister, which, I may remark, offered to Burmans control of almost the whole range of functions which it is proposed in the White Paper to transfer to popular control in the Indian Federal Government and in the Provinces.

The Committee, therefore, will apparently have to make their recommendation for or against the separation of Burma without any clear expression of opinion from the Burma Council: but I should hope that when the Committee reassembles after the recess an opportunity will be afforded to the Indian delegates to express their views, and that the Committee will also agree to invite to London a suitable number of representative Burmans for consultation.

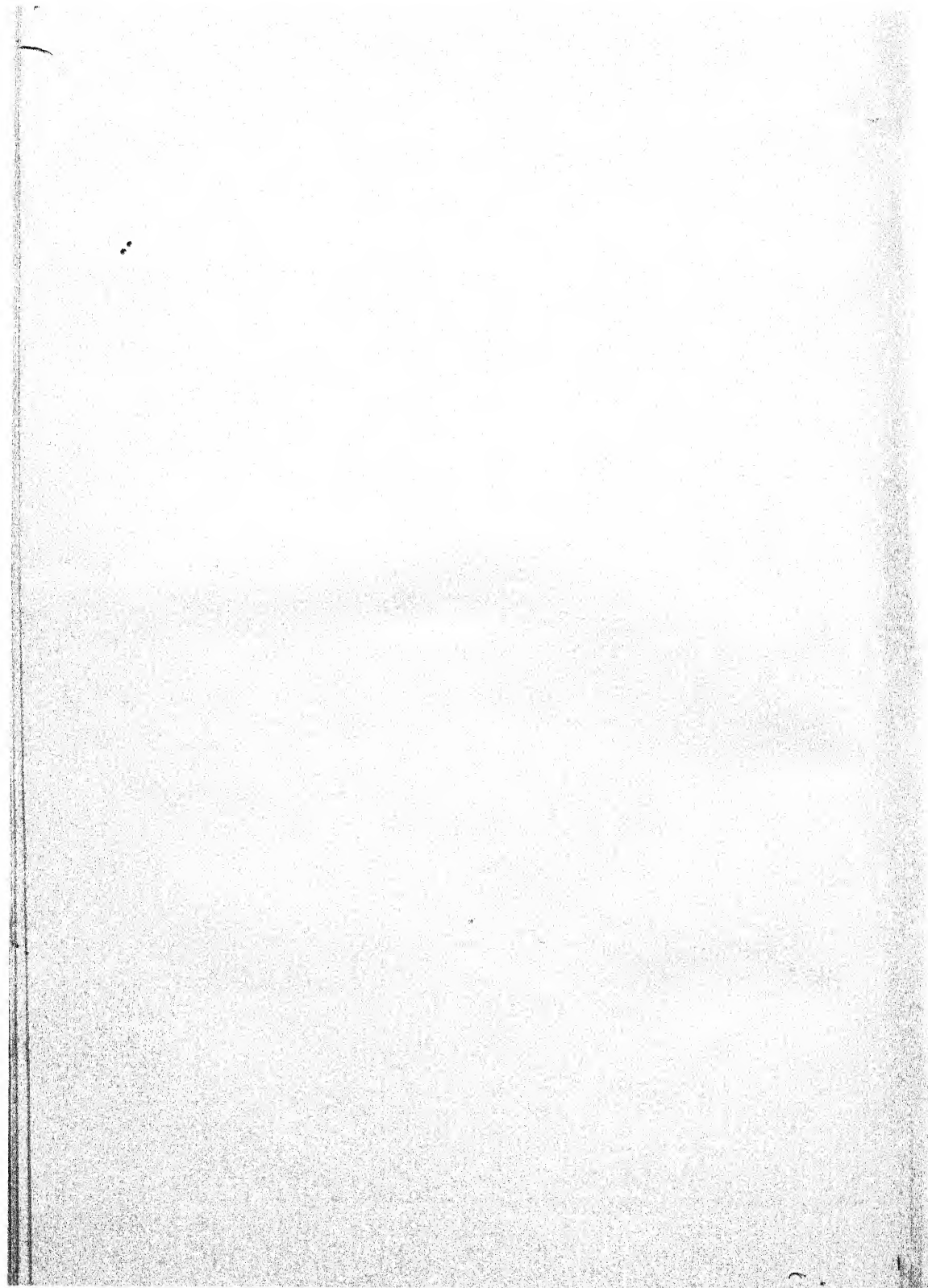
S. H.



# Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform

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**Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.**

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**INTRODUCTION.**

The object of this Introduction is to explain in the broadest outline the changes in the government of Burma which would be brought about by the adoption of the proposals which follow.

1. The principle underlying these proposals is that, in the event of Burma being separated from India, a unitary form of government would be set up there, under a Constitution composed, broadly speaking, on the same constitutional principles as have been embodied in the proposals made in regard to India. No attempt is made in this introduction to explain proposals common to both cases, as such proposals have been fully explained in the introduction to the Indian White Paper. The essential difference between the two cases is that the Constitution for Burma would not be complicated by the special considerations arising from the concept of an Indian Federation, and that the Government of Burma would accordingly combine in its own hands functions which, in the case of the proposals in the Indian White Paper, have necessarily been distributed between the Federation and the Provinces. Differing circumstances have made it necessary to depart from the Indian model in the case of a few matters, but the close correspondence of the two sets of proposals is shown by the number of proposals in this paper which are set out in plain type, a device which indicates that they are in substance identical with, although they necessarily differ in some respects in form from, corresponding provisions in the Indian proposals. References to the corresponding proposals in the Indian White Paper are indicated in the margin.

2. It has in the past been suggested\* that in view of the differences of race, history, culture and political development between India and Burma, the linking of Burma to India in the last century for reasons of administrative convenience should not of necessity tie Burma to the same path of political progress as India; and the view has been advanced that the Empire affords examples, such as are to be found in Ceylon and elsewhere, of other types of constitutional arrangement which might be more

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\* Paragraph 198, Montagu-Chelmsford Report.

suitable to the genius of the Burman people. But since the Government of India Act of 1919 Burma has been steadily carried forward by the tide of Indian reform, so that she now stands at the same point of political development as the other Provinces of British India. It does not therefore seem possible, even if it were politically expedient, to contemplate either a different line of advance for Burma from that mapped out for India or a different rate of progress. This position was recognised by the Government of Burma in a Despatch of the 13th August 1930,\* in which they wrote :—

“ . . . It is of great importance that it should be made clear beyond all possibility of doubt or question that the separation of Burma will not involve for Burma any departure from the statement contained in the preamble to the Government of India Act, 1919, that the objective of British policy is the progressive realisation of responsible government in British India as an integral part of the Empire. As the Commission† say, that statement constitutes a pledge given by the British nation to British India. When the pledge was first announced in August 1917, Burma was a part of British India. The pledge, therefore, was given to Burma as well as to India, and even if Burma is separated from India the pledge still stands for Burma unimpaired and in all its force. The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject. They attach importance to the point, for the allegation is frequently made in that section of the public press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony.”

3. The Burma Sub-Committee of the first Indian Round Table Conference included in its Report,§ as its first recommendation, a request to His Majesty's Government—

“to make a public announcement that the principle of separation is accepted, and that the prospects of constitutional advance towards responsible government held out to Burma as part of British India will not be prejudiced by separation.”

The Indian Round Table Conference did not agree unanimously to the adoption of, and action on, this recommendation without further full consideration, but it was generally admitted that such further consideration was a matter between His Majesty's

\* Page 244, Cmd. 3712 of 1930.

† Simon Commission.

§ Page 50 of Cmd. 3772 of 1931.



Government and the Burmans themselves, and that Indians would abide by the issue.

4. The next step was taken by the Secretary of State for India in answer to a question in the House of Commons on 20th January 1931, when he made the following statement:—

“As my Right Hon. Friend the Prime Minister stated yesterday in the final plenary session of the Round Table Conference, the Government have decided to proceed with the separation of Burma. They wish it to be understood that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by this decision, and that the constitutional objective after separation will remain the progressive realisation of responsible government in Burma as an integral part of the Empire. In pursuance of this decision they intend to take such steps towards the framing, in consultation with public opinion in Burma, of a new Constitution as may be found most convenient and expeditious, their object being that the new Constitutions for India and Burma shall come into force as near as may be simultaneously.”

5. In pursuance of this announcement the Burma Round Table Conference was convened “for the purpose of seeking the greatest possible measure of agreement regarding the future Constitution of Burma and the relations of Burma with India,” the primary task of the Conference being “to discuss the lines of a Constitution for a separated Burma.”

The Conference sat from the 27th November 1931 to the 12th January 1932, and its Report disclosed a considerable measure of agreement between the delegates from Burma and those from Parliament upon the type and details of a Constitution for a separated Burma. In the course of the Conference a statement was made on behalf of His Majesty's Government to the effect that the assurance given in the Prime Minister's statement on 19th January at the end of the first Indian Conference, and reiterated on 1st December 1931 at the close of the second Conference, defining His Majesty's Government's policy towards India and her advance through the new Constitution with its reservations and safeguards for a transitional period to full responsibility for her own government, applied in principle equally to Burma. The sketch of a Constitution for Burma outlined in some detail in the Prime Minister's statement at the end of the Burma Conference, and drawn up in the light of the Conference discussions, took therefore for its basic principle responsible government subject to certain “safeguards” in the field of administration which is now “provincial,” and subject to

certain "reservations" as well as "safeguards" in the field now administered by the Central Government of India.

6. In his statement on 12th January 1932 the Prime Minister said, on behalf of His Majesty's Government, that if and when they were satisfied that the desire of the people of Burma was that the government of their country should be separated from that of India, they would take steps, subject to the approval of Parliament, to give effect to this desire.

In order to ascertain the desire of the people of Burma, advantage was to be taken of a general election to the Burma Legislative Council, which was due to be held in the following autumn. At this election the question of separation was inevitably the main issue before the electorate. But prior to the election a mass meeting of members of the various General Councils of Burmese Associations (who had hitherto refused to co-operate with the dyarchical Government in Burma, or even take part in elections), was held at the Jubilee Hall, Rangoon, in the first week of July. At this mass meeting it was resolved to form an Anti-Separation League. The policy of the League was laid down in five Resolutions, the effect of which was to reject the Constitution for a separated Burma outlined by the Prime Minister at the end of the Round Table Conference, and to declare the League's opposition to separation from India on the basis of this Constitution; to "protest emphatically" against the idea of permanent and unconditional inclusion in the Indian Federation, and to continue opposition to separation till a Constitution be granted "satisfactory and acceptable to the people of Burma." The meeting resolved also to take an active part in the impending election, with a view to combating separation on the conditions held out by the Prime Minister's statement. The election was held in November 1932, and the electorate returned a majority of candidates describing themselves as "Anti-Separationists" and as adherents to the policy adopted by the Anti-Separation League formed at the Jubilee Hall meeting.

7. In December 1932 the question of separation from India on the basis of the Constitution outlined by His Majesty's Government, or of inclusion, as a British Indian Province, in the Indian Federation, formed the subject of a protracted debate in the Burma Legislative Council. The Council, eventually, on 22nd December, adopted a Resolution which was identical in substance and almost in terms with those adopted at the Jubilee Hall meeting. It (1) opposed the separation of Burma from India on the basis of the Constitution outlined by the Prime Minister on 12th January 1932; (2) emphatically opposed the unconditional and permanent federation of Burma with India; (3) promised continued opposition to the separation of Burma from India except on certain

conditions; and (4) proposed that, in the event of these conditions not being fulfilled, Burma should be included in the Indian Federation on special conditions differentiating her from other Provinces and including the right to secede at will from the Federation.

8. Such a Resolution indicated no clear choice between the alternatives that had been placed before the Council. But it was hoped that, in the light of the Indian White Paper published in March 1933, and in the light also of the statement made by the Secretary of State for India on 20th March in answer to questions in the House of Commons, as to the nature of the two alternatives still open for choice by Burma, the Burma Legislative Council might yet give a less equivocal indication of the desire of the people of Burma in respect of the two courses offered. Accordingly, a special session of the Council was, at the request of the majority of the party leaders, summoned for 25th April 1933 and was held between that date and 6th May.

This special session proved entirely unfruitful. It was pro-rogued on 6th May without any resolution being adopted either for Burma's inclusion in the Indian Federation or for the separation of her government from that of India. As a result, there is available no other authoritative indication of the considered view of the representatives of the people of Burma as to the course which should be adopted than that contained in the negative and conditional Resolution of 22nd December 1932.

In the second paragraph of that Resolution the Burma Legislative Council expressed itself as emphatically opposed to unconditional and permanent federation with India, and such further evidence as has since accumulated regarding the attitude of the people and political parties of Burma, including statements by party leaders, points to the conclusion that, whatever division of opinion may exist in Burma as to the merits of the Constitution outlined in the Prime Minister's statement, there is an almost unanimous opinion in favour of ultimate separation from India and against federation on the same terms as the other Provinces of India.

#### GENERAL DESCRIPTION OF THE SCHEME.

9. Before examining the scheme in detail it is desirable in the first place to refer to a question affecting the position within the Empire of a Burma separated from India. Unless provision to the contrary is made, the moment Burma ceases to be part of British India she will, by virtue of the Interpretation Act, 1889, which defines a "Colony" as "any part of His Majesty's dominions exclusive of the British Islands and of British India,"

automatically become "a Colony" for all purposes of English law. Although there is no necessary connection between the status of a "Colony" and that of a "Crown Colony," it is clearly desirable that the position of Burma should be unambiguous, and it would be necessary to insert in the Constitution a provision to the effect that, notwithstanding anything in the Interpretation Act, the expression "Colony" in any Act of the Parliament of the United Kingdom should not include Burma. At the same time provision would be made to ensure that Acts of Parliament which have hitherto applied to Burma as part of British India should continue to do so.

10. The separation of Burma from India would also require on the financial side that arrangements should be made for an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act; and provision would have to be made in the Act to give statutory effect to such determination and to such agreements as might be made thereunder by the respective Governments of the two countries.

11. In view of the fact that, as already pointed out, the constitutional principles underlying this scheme are substantially the same as those which have been applied in relation to the Indian proposals, much that has been said in the Indian White Paper is applicable also to the present proposals. But it is believed that the nature of the present proposals will more readily be understood if a short description of their general purport is given at the outset.

12. The scheme proposed is for an Executive consisting of the Governor as representing the Crown, aided and advised by a Council of Ministers responsible (subject to the qualifications to be explained later) to a Legislature composed of two Houses and consisting as to the Upper Chamber of 36 members, of whom one-half would be elected by the Lower Chamber and one-half would be non-official persons nominated by the Governor in his discretion for the purpose of making the Chamber as fully representative as possible of the interests of all sections of the community. The Lower Chamber would consist of rather more than 130 members, of whom a proportion would represent minorities and special interests.

13. In the Government so composed would be concentrated all the functions which, in the case of India, are proposed to be divided between the Federal and Provincial Authorities. But, as in India, the transfer of responsibility would not be complete. Certain Departments, namely, those concerned with Defence, External Affairs, Ecclesiastical Affairs, and the Affairs of



Excluded Areas (to be called, in the case of Burma, "Schedule A areas"), to which, for reasons presently to be explained, would be added, in the case of Burma, the control of monetary policy, currency and coinage, would be entrusted to the Governor personally, and these matters he would control in responsibility to His Majesty's Government and Parliament. The Governor would also be given powers similar to those proposed to be conferred on the Governor-General and Governors in India in relation to dissolution of the Legislature, refusal of assent to Bills, the grant of previous sanction to the introduction of certain classes of legislation, &c. The administration of all other matters would be transferred to Ministers responsible to the Legislature, but the Governor, again following the proposals made in relation to India, would be declared to have a special responsibility for certain matters, namely :—

- (a) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof ;
- (b) the safeguarding of the financial stability and credit of Burma ;
- (c) the safeguarding of the legitimate interests of minorities ;
- (d) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests ;
- (e) the prevention of commercial discrimination ;
- (f) the administration of the areas named in Schedule B to the Constitution Act ;
- (g) any matter which affects the administration of any department of government under the direction and control of the Governor.

The effect of entrusting these responsibilities to the Governor and the manner in which it is anticipated they would be discharged are described in the Indian White Paper, and it has not been thought necessary to reproduce here what is said in that Paper.

14. It is now possible to draw attention to the points in regard to which it has been thought the special requirements of Burma would make some divergence from the Indian proposals desirable, and to indicate the effect of those divergences.

15. In the first place it will be observed that it is proposed that the control of monetary policy, currency and coinage should be treated as a reserved subject. The reasons for this proposal are two-fold. Burma would at the outset be within the currency system of India, and it is likely to be some time before conditions would render it possible for her to adopt a separate currency

system of her own ; the subject, moreover, is one in regard to which Burma possesses no expert knowledge. It is, therefore, proposed that these matters should be under the personal control of the Governor, who would be empowered to appoint a Financial Adviser directly responsible to him.

16. The different composition proposed for the Burma Legislature is, of course, mainly due to the absence of the detailed arrangements involved in the accession of the Indian States to the Indian Federation, but also in part to the fact that the communal difficulties which have necessitated special arrangements in India have, practically speaking, no counterpart in Burma.

17. The importance to Burma of the immigration problem might also render it necessary to make some special provision in this respect.

18. Again, in regard to the administration of what, in the case of India, have been described as Excluded or Partially Excluded areas, conditions in Burma may demand slightly different treatment. Detailed provisions for the treatment of such areas in Burma have therefore been excluded from the scope of this tentative scheme. It is proposed in the case of Burma that the areas falling within the two categories mentioned above should be enumerated in two separate Schedules, A and B, to the Constitution Act, and it will therefore be convenient to refer to them as Schedule A or Schedule B areas rather than Wholly or Partially Excluded areas. A provisional list of these areas will be found in Appendix II.

#### THE PUBLIC SERVICES.

19. As regards the All-India Services, Burma, like any other Indian Province, is at present served by the Indian Civil Service, the Indian Police, and the Indian Service of Engineers. But since the last instalment of reforms, when the administration of forests was made a transferred subject in Burma and Bombay, recruitment to the Indian Forest Service in Burma has ceased ; recruitment now being made instead by the Local Government to the Burma Forest Service (Class I). As in the case of India, it is proposed that under the new Constitution recruitment should cease in Burma for the Indian Service of Engineers. As regards the Indian Civil Service and the Police, the Services which would correspond to these in Burma in future would, of course, be differently named, but the Secretary of State would continue to recruit Europeans to them in the same proportion as at present pending a statutory enquiry into the recruitment question, which would take place after a period to be determined (see proposal 93)

20. Burma is also served by officers of the Central Services, e.g. the Railway Services, the Indian Audit and Accounts Service, the Indian Posts and Telegraphs, and the Imperial Customs Service. Members of these Services remaining in Burma would be absorbed in new Services administered by the Government of Burma independently of the Government of India.

21. As regards Central Service officers now serving in Burma, some were recruited by the Government of India for service in Burma alone, others were recruited either by the Secretary of State or the Government of India without special reference to service in Burma. Officers falling in the first category would be compulsorily transferred to the service of the Government of Burma. Transfer to the Government of Burma of officers falling in the second category would be subject to the consent of the officers themselves and of the authority which appointed them, and would be a matter for arrangement between the Governments of India and Burma.

22. In addition to the ordinary Provincial Service, which covers the whole of the civil administration in the middle and lower grades, Burma possesses the Burma Frontier Service. This Service is now controlled and recruited by the Local Government, but many of its members, in common with many members of the Provincial Services, have rights guaranteed by the Secretary of State. In view of the fact that if Burma were separated from India most of the officers of the Burma Frontier Service would serve in areas under the sole control of the Governor, it would seem proper that the Service should be recruited and controlled by the Governor acting in his discretion.

23. Existing service rights of present members of the above-mentioned Services would be preserved under the Constitution Act, subject to a few inevitable changes of which an example is that persons appointed by the Government of India would on transfer to service in Burma cease to be liable to dismissal by the Governor-General and become instead liable to dismissal by the Governor of Burma. The principal changes of this kind are indicated against notes in the Proposals. Persons appointed in future by the Secretary of State to the Services which would replace the Indian Civil Service and the Indian Police would enjoy the same rights as persons appointed by the Secretary of State to the Indian Civil Service and the Indian Police before the Constitution Act comes into force, except that in the first instance the right to retire under the regulations for premature retirement would, in the case of officers recruited after the inauguration of the new Constitution, extend only to

those appointed before the decision to be taken regarding future recruitment following upon the statutory enquiry referred to in paragraph 19 above. The right to retire under those regulations would not be enjoyed by officers serving permanently in Departments under the direct control of the Governor, but it would be extended to those officers of the present Central Services (Class I) who were appointed by the Secretary of State and who might be transferred permanently to Departments handed over to the control of Ministers in Burma.

24. As in the case of India, provision would be made for continued recruitment by the Secretary of State to the Ecclesiastical Department. The question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination.

25. As regards Family Pension Funds, officers in Burma who, before the coming into force of the Constitution Act, were members of one of the All-India Family Pension Funds, would be permitted to retain their membership of such Fund.



**NOTE.**—*The use of italics in the following proposals indicates a divergence from the proposals of the Indian White Paper (Cmd. 4268 of 1933).*

## THE PROPOSALS.

### GENERAL.

Numbers of  
corresponding  
proposals in  
Indian White  
Paper.

1

1. The general principle underlying all these proposals is that all powers appertaining or incidental to the government of the territories for the time being belonging to His Majesty the King in Burma and all rights, authority and jurisdiction possessed in that country—whether flowing from His Majesty's sovereignty over the Province of Burma, or derived from treaty, grant, usage, sufferance or otherwise in relation to other territories—are vested in the Crown and are exercisable by and in the name of the King.

2. *The territories belonging to His Majesty the King in Burma will be declared to be those which at the date of coming into force of the Act constitute the Province of Burma in British India. The date of the coming into force of the Act will be fixed by Royal Proclamation.*

3. *Provision will be made to except Burma from the definition of "Colony" in the Interpretation Act.\**

4. *Provision will be made for the continuance in force, until repealed by competent authority, of all laws of the Parliament of the United Kingdom which at present apply to Burma as part of British India, of laws of the Indian Legislature which apply to Burma, and of laws passed by the existing Burma Legislature, together with the body of rules, notifications and instructions issued under these laws.*

5. *It will be declared that all rights and obligations under international treaties, conventions or agreements which before the commencement of the Constitution Act were binding upon Burma as part of British India shall continue to be binding upon her.†*

### THE EXECUTIVE.

6. The executive authority in Burma, including the supreme command of the Military, Naval and Air Forces in Burma, will be

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..\* The object of proposals 3 and 4 is to ensure that all legislation and regulations which at present apply to Burma as part of British India still continue to apply to her, and to prevent the separation of Burma from British India from bringing her within the ambit of Imperial laws passed with reference to "Colonies" as defined in the Interpretation Act, 1889, i.e. "any part of His Majesty's Dominions exclusive of the British Islands and of British India." See paragraph 9 of Introduction.

† A similar provision is to be found in section 148 (1) of the South Africa Act. Whether or not such a provision is necessary or desirable in the Indian Constitution Act, it seems clearly desirable in the case of a separated Burma, to make it clear beyond doubt, on the lines of proposal 4, that all obligations hitherto binding upon Burma as part of British India shall continue to apply to her unless and until abrogated by competent authority.

exercisable on the King's behalf by a Governor holding office during His Majesty's pleasure, *who will also be Commander-in-Chief.\**

All executive acts will run in the name of the Governor.

- 8     7. The Governor will exercise the powers conferred upon him by the Constitution Act as executive head in Burma and such powers of His Majesty (not being powers inconsistent with the provisions of the Constitution Act) as His Majesty may be pleased by Letters Patent constituting the office of Governor to assign to him. In exercising all these powers the Governor will act in accordance with an Instrument of Instructions to be issued to him by the King.
- 9     8. The draft of the Governor's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment, or addition to, or omission from, the Instructions.
- 10    9. The Governor's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or of salaries and allowances of his personal and secretarial staff, will be fixed by Order in Council; none of these payments will be subject to the vote of the Legislature.

#### THE WORKING OF THE EXECUTIVE.

- 11 and 107    10. The Governor will himself direct and control the administration of certain Departments of State—namely, Defence, External Affairs, Ecclesiastical Affairs—and also the affairs of the areas named in Schedule A to the Constitution Act,† *and monetary policy, currency and coinage.‡*

\* The Indian White Paper proposes to continue the separate appointment of a Commander-in-Chief in India. No corresponding appointment seems either necessary or desirable in the case of Burma, in view of the smaller size of the military forces concerned. But it is thought desirable to invest the Governor with the title of Commander-in-Chief to emphasise the fact that the executive military power is vested in him.

† See paragraph 18 of the Introduction.

§ In the case of the Indian Federation it is proposed to transfer the whole subject of Finance to the charge of a responsible Minister, but subject to the prior establishment and successful operation of a Reserve Bank and subject to a special responsibility laid upon the Governor-General for the preservation of the financial stability and credit of the Federation. There is no proposal to set up a Reserve Bank in Burma. In the case of Burma it is proposed, subject to a special responsibility of the same kind as that it is proposed to impose upon the Governor-General in India, to transfer the general subject of Finance to Ministerial control, but to reserve "Monetary policy, currency and coinage" to the Governor as a department in his sole charge (assisted by a Financial Adviser). It is, however, proposed that, for some time to come, Burma should continue within the Indian currency system.

11. In the administration of these Reserved Departments, the Governor will be assisted by one or more Counsellors, not exceeding three in number, who will be appointed by the Governor, and whose salaries and conditions of service will be prescribed by Order in Council. *Of these Counsellors one may, at the discretion of the Governor, be appointed to be Financial Adviser.* 12

12. For the purpose of aiding and advising the Governor in the exercise of powers conferred upon him by the Constitution Act, other than powers connected with the matters mentioned in paragraph 10, and matters left by law to his discretion, there will be a Council of Ministers. The Ministers will be chosen and summoned by the Governor and sworn as Members of the Council and will hold office during his pleasure. The persons appointed Ministers must be, or become within a stated period, members of one or other Chamber of the Legislature. 13

13. In his Instrument of Instructions the Governor will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner, that is, in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature, to appoint those persons who will best be in a position collectively to command the confidence of the Legislature. 14

14. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Legislature, but, until the Legislature otherwise determines, their number and their salaries will be such as the Governor determines, subject to limits to be laid down in the Constitution Act. 15

The salary of a Minister will not be subject to variation during his term of office.

15. The Governor will, whenever he thinks fit, preside at meetings of his Council of Ministers. He will also be authorised, after consultation with his Ministers, to make at his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself and to his Counsellors in the Reserved Departments, and to the Financial Adviser, of all such information as he may direct. 16

16. The Governor will be empowered, at his discretion, after consultation with Ministers, to appoint a Financial Adviser to assist him, and also to advise Ministers on matters regarding which they may seek his advice. The Financial Adviser will be 17

responsible to the Governor and will hold office during pleasure; his salary and conditions of service will be fixed by the Governor in his discretion, and will not be subject to the vote of the Legislature.

18 and 70. 17. Apart from his exclusive responsibility for the Reserved Departments (proposal 10), the Governor will be declared to have a "special responsibility"\* in respect of—

- (a) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof;
- (b) the safeguarding of the financial stability and credit of Burma;
- (c) the safeguarding of the legitimate interests of minorities;
- (d) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests;
- (e) the prevention of commercial discrimination;
- (f) the administration of the areas named in Schedule B to the Constitution Act.†
- (g) any matter which affects the administration of any department of government under the direction and control of the Governor.

It will be for the Governor to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances.

19 18. If in any case in which, in the opinion of the Governor, a special responsibility is imposed upon him it appears to him, after considering such advice as has been given him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions.

20 19. The Governor in administering the Departments under his own direction and control, in taking action for the discharge of any special responsibility, and in exercising any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by a principal Secretary of State.

21 20. The Governor's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines:—

"In matters arising in the Departments which you direct and control on your own responsibility, or in matters the

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\* See paragraphs 25 and 47 of the Introduction in the Indian White Paper.

† See paragraph 18 of Introduction.



determination of which is by law committed to your discretion, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such a manner as you may judge right and expedient for the good government of Burma, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State.

"In matters arising out of the exercise of powers conferred upon you for the purposes of the government of Burma other than those specified in the preceding paragraph it is Our will and pleasure that you should, in the exercise of the powers by law conferred upon you, be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you ; in which case it is Our will and pleasure that you should, notwithstanding your Ministers' advice, act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State."

#### THE LEGISLATURE.\*

##### *General.*

21. The Legislature will consist of the King, represented by the Governor, and two Chambers, to be styled the Senate and the House of Representatives, and will be summoned to meet for

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\* The proposals for the constitution of the Legislature are modelled closely on those for the Indian Federal Legislature, but it is not possible for them to correspond exactly. Such minor differences as are suggested rest on the conclusions of the Burma Round Table Conference or upon the advice of the Government of Burma. The reason for these differences is that the circumstances in Burma differ from those which exist in India. In the first place, the communal problem in the Indian sense does not exist in Burma, and apart from special provision for the reasonable representation of certain well-defined minority communities such as the Indian and European, it is proposed that members of the Lower Chamber in Burma should be elected by general constituencies on a common franchise. Secondly, there are no States to which special representation in the Legislature requires to be given. It is proposed that the Upper Chamber in Burma should be constituted as to half of its 36 members by election by the Lower Chamber and that the remaining half should consist of non-officials nominated by the Governor in his discretion, with the object of making the Upper Chamber as far as possible fully representative of the interests of different sections of the population (proposal 25). The Government of Burma advocate a minimum age limit of 35 for membership of the Burma Senate, but as a limit of 30 has been proposed for Second Chambers in the Indian Provinces proposal 26 makes no specific

[Continued on next page.]

the first time not later than a date to be specified in the Proclamation which fixes a date for the coming into force of the Act.

Every Act of the Legislature will be expressed as having been enacted by the Governor, by and with the consent of both Chambers.

- 23      22. Power to summon, and appoint places for the meeting of, the Chambers, to prorogue them and to dissolve them, either separately or simultaneously, will be vested in the Governor at his discretion, subject to the requirement that they shall meet at least once in every year, and that not more than 12 months shall intervene between the end of one session and the commencement of the next.

The Governor will also be empowered to summon the Chambers for the purpose of addressing them.

- 24      23. Each House of Representatives will continue for five years unless sooner dissolved. *No term will be fixed to the life of the Senate.*

- 25      24. A Member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a Member. A Counsellor will be *ex-officio* an additional member of both Chambers for all purposes except the right of voting.

#### *The Composition of the Chambers.*

- 26      25. The Senate will consist, apart from the Governor's Counsellors, *of not more than 36 members of whom 18 will be elected by the House of Representatives and 18 (who shall not be officials) will be nominated by the Governor in his discretion.*

- 27      26. A member of the Senate will be required to be *not less than (30 or 35) years of age* and a British subject, and to possess certain prescribed property qualifications, or to possess qualifications to

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*Continued from previous page.]*

suggestion. It is also proposed that, subject to the Governor's power of dissolution in exceptional circumstances, the life of the Upper Chamber should not be subject to termination (proposal 23). Some device is, however, required to ensure that it remains in touch with public opinion. It is therefore proposed (proposal 28) that one-quarter of the members should retire every two years.

The only other point of difference in this connection from the Indian proposals is that in the case of Burma it is proposed (proposal 37) that the powers of the two Chambers should be entirely equal except for the vesting of Supply in the Lower Chamber alone, while in the case of the Indian Federal Legislature not only Supply, but also the initiation of Money Bills, rests with the Lower House alone, subject, as regards Supply, to a power in the Upper Chamber, if a motion to that effect is moved on behalf of Government, of requiring a Joint Session to be called if it disapproves of a reduction or rejection of any Demand by the Lower Chamber.

be prescribed by the Governor with a view to conferring qualification upon persons who have rendered distinguished public service.

**27.** If the seat of a Senator becomes vacant, his place will be filled either by election by the House of Representatives or by nomination by the Governor, according to the method by which he had himself obtained his seat. **28**

*28. One-quarter of the Senators will retire at the expiration of every period of two years, this quarter being composed alternately of one-half of the nominated members and one-half of the elected members; the first quarter to retire to consist of nominated members. The selection of those Senators who are to retire at the expiration of the first two periods of two years after the first summoning of the Senate to be determined by lot. (Subject to the above arrangements the tenure of seats to be for eight years).*

**29.** The House of Representatives will consist, apart from the Governor's Counsellors, of [133] members, of whom 119 will be elected to represent general constituencies and 14 elected to represent special constituencies. **29**

**30.** A member of the House of Representatives will be required to be not less than 25 years of age and a British subject. **30**

**31.** Casual vacancies in the House of Representatives will be filled by the same method as that followed in the case of the election of the vacating member. **31**

**32.** Every member of either Chamber will be required to make and subscribe an oath or affirmation in the following form before taking his seat :— **33**

“I, A. B., having been  $\frac{\text{elected}}{\text{nominated}}$  a member of this  
Senate  
House of Representatives, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

**33.** The following disqualifications will be prescribed for membership of either Chamber :— **34**

- (a) in the case of elected members or of members nominated by the Governor, the holding of any office of profit under the Crown other than that of Minister ;
- (b) a declaration of unsoundness of mind by a competent Court ;

- (c) being an undischarged bankrupt;
- (d) conviction of the offence of corrupt practices or other election offences;
- (e) in the case of a legal practitioner, suspension from practice by order of a competent Court;

but provision will be made that the last two disqualifications may be removed by order of the Governor at his discretion;

- (f) having an undisclosed interest in any contract with the Government; provided that the mere holding of shares in a company will not by itself involve this disqualification.

**35**     **34.** A person sitting or voting as a member of either Chamber when he is not qualified for, or is disqualified from, membership will be made liable to a penalty of                      in respect of each day on which he so sits or votes, to be recovered in the High Court by suit instituted with the consent of a Principal Law Officer of the Government.

**36**     **35.** Subject to the Rules and Standing Orders affecting the Chamber there will be freedom of speech in both Chambers of the Legislature. No person will be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings in either Chamber.

**37**     **36.** The following matters connected with elections and electoral procedure, in so far as provision is not made by the Act, will be regulated by Order in Council :—

- (a) The qualifications of electors;
- (b) The delimitation of constituencies;
- (c) The method of election of representatives of minorities and other interests;
- (d) the filling of casual vacancies; and
- (e) Other matters ancillary to the above;

with provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament.

For matters other than the above connected with the conduct of elections the Legislature will be empowered to make provision by Act. But until the Legislature otherwise determines, existing laws or rules, including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections, will remain in force, subject, however, to such modifications or



adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution.

*Legislative Procedure.*

**37.** Bills may be introduced in either Chamber.

**38**

**38.** The Governor will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure. But before taking any of these courses it will be open to the Governor to remit a Bill to the Chambers with a Message requesting its reconsideration in whole or in part, together with such amendments, if any, as he may recommend.

**39**

Without prejudice to the provisions of proposal 40 no Bill will become law until it has been agreed to by both Chambers either without amendment or with such amendments only as are agreed to by both Chambers, and has been assented to by the Governor, or, in the case of a reserved Bill, until His Majesty in Council has signified his assent.

**39.** Any Act assented to by the Governor will within twelve months be subject to disallowance by His Majesty in Council.

**40**

**40.** In the case of disagreement between the Chambers, the Governor will be empowered, in any case in which a Bill passed by one Chamber has not, within three months thereafter, been passed by the other, either without amendments or with agreed amendments, to summon the two Chambers to meet in a joint sitting for the purpose of reaching a decision on the Bill. The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other. Any such amendments which are affirmed by a majority of the total number of members voting at the Joint Session will be deemed to have been carried, and if the Bill, with the amendments, if any, so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers.

**41**

In the case of a Money Bill, or in cases where, in the Governor's opinion, a decision on the Bill cannot, consistently with the fulfilment of his responsibilities for a Reserved Department\* or of any of his "special responsibilities," be deferred, the Governor will be empowered in his discretion to summon a Joint Session forthwith.

\* These responsibilities cover all matters specified in proposal 10.

42 41. In order to enable the Governor to fulfil the responsibilities imposed upon him personally for the administration of the Reserved Departments and his "special responsibilities," he will be empowered at his discretion—

- (a) to present, or cause to be presented, a Bill to either Chamber, and to declare by Message to both Chambers that it is essential, having regard to his responsibilities for a Reserved Department or, as the case may be, to any of his "special responsibilities," that the Bill so presented should become law before a date specified in the Message; and
- (b) to declare by Message in respect of any Bill already introduced in either Chamber that it should for similar reasons become law before a stated date in a form specified in the Message.

A Bill which is the subject of such a Message will then be considered or reconsidered by the Chambers, as the case may require, and if, before the date specified, it is not passed by the two Chambers, or is not passed by the two Chambers in the form specified, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by either Chamber after receipt of his Message.

A Governor's Act so enacted will have the same force and effect as an Act of the Legislature, and will be subject to disallowance in the same manner, but the Governor's competence to legislate under this provision will not extend beyond the competence of the Legislature as defined by the Constitution.

43 42. It will be made clear by means of the enacting words of a Governor's Act, which will be distinguished from the enacting words of an ordinary Act (see proposal 21), that Acts of the former description are enacted on the Governor's own responsibility.

44 43. Provision will also be made empowering the Governor in his discretion, in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of Burma, to direct that the Bill, clause or amendment shall not be further proceeded with.

*Procedure with regard to Financial Proposals.*

45 44. A recommendation of the Governor will be required for any proposal in either Chamber of the Legislature for the imposition

of taxation, for the appropriation of public revenues, or any proposal affecting the public debt, or affecting, or imposing any charge upon, public revenues.\*

45. The Governor will cause a statement of the estimated revenue and expenditure, together with a statement of all proposals for the appropriation of those revenues, to be laid, in respect of every financial year, before both Chambers of the Legislature.

46

The statement of proposals for appropriation will be so arranged as—

- (a) to distinguish between those proposals which will and those which will not (see proposal 47) be submitted to the vote of the Legislature, and amongst the latter to distinguish those which are in the nature of standing charges (for example, the items marked † in the list in proposal 47); and
- (b) to specify separately those additional proposals (if any), whether under the Votable or non-Votable Heads, which the Governor regards as necessary for the discharge of any of his "special responsibilities."

46. The proposals for the appropriation of revenues, other than proposals relating to the Heads of Expenditure enumerated in paragraph 47, and proposals (if any) made by the Governor in discharge of his special responsibilities, will be submitted in the form of Demands for Grants to the vote of the House of Representatives. The House of Representatives will be empowered to assent or refuse assent to any Demand or to reduce the amount specified therein, whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it.

47

47. Proposals for appropriations of revenues, if they relate to the Heads of Expenditure enumerated in this paragraph, will not be submitted to the vote of either Chamber of the Legislature, but will be open to discussion in both Chambers, except in the case of the salary and allowances of the Governor.

49

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\* This paragraph represents the constitutional principle embodied in Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire:—

"This House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament, unless recommended from the Crown."

The Heads of Expenditure referred to above are :—

- (i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service and management of loans†; expenditure fixed by or under the Constitution Act†; expenditure required to satisfy a decree of any Court or an arbitral award.
- (ii) The salary and allowances of the Governor†; of Ministers†; of the Governor's Counsellors†; of the Financial Adviser†; of the Governor's personal and secretarial staff and of the staff of the Financial Adviser.
- (iii) Expenditure required for the Reserved Departments\*; or for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State.
- (iv) The salaries and pensions (including pensions payable to their dependants) of Judges of the High Court†; and expenditure certified by the Governor after consultation with his Ministers as required for the expenses of that Court.
- (v) Salaries and pensions payable to, or to the dependants of, certain members of the Public Services and certain other sums payable to such persons.‡

The Governor will be empowered to decide finally and conclusively, for all purposes, any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph.

- 50      48. At the conclusion of the budget proceedings the Governor will authenticate by his signature all appropriations, whether voted or those relating to matters enumerated in proposal 47; the appropriations so authenticated will be laid before both Chambers of the Legislature, but will not be open to discussion.

In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation.

The authentication of the Governor will be sufficient authority for the due application of the sums involved.

- 51      49. The provisions of proposals 44 to 48 inclusive will apply with the necessary modifications to proposals for the appropriation of revenues to meet expenditure not included in the Annual

\* i.e. all the matters specified in proposal 10.

† See Appendix I, Part III.



Estimates which it may become necessary to incur during the course of the financial year.

*Procedure in the Legislature.*

50. The procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber ; but the Governor will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—

52

- (a) regulating the procedure of, and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments, or any other special responsibilities with which he is charged ; and
- \*(b) prohibiting, save with the prior consent of the Governor given at his discretion, the discussion of or the asking of questions on any matter affecting relations between His Majesty or the Governor and any foreign Prince or State.

In the event of conflict between a rule so made by the Governor and any rule made by the Chamber, the former will prevail and the latter will, to the extent of the inconsistency, be void.

*Emergency Powers of the Governor in relation to Legislation.*

51. The Governor will be empowered at his discretion, if at any time he is satisfied that the requirements of the Reserved Departments, or any of the "special responsibilities" with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Legislature to enact.

53

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein ; the Governor will, however, have power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament.

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\* Some provision will also be required on lines of proposal 109 of the Indian White Paper, having due regard to the fact that the areas in Burma which will correspond to Excluded and Partially Excluded Areas in India may require slightly different treatment.

An Ordinance will have the same force and effect, whilst in operation, as an Act of the Legislature ; but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts and will be subject to withdrawal at any time by the Governor.

- 54      52. In addition to the powers to be conferred upon the Governor at his discretion in the preceding paragraph, the Governor will further be empowered if his Ministers are satisfied, at a time when the Legislature is not in session, that an emergency exists which renders such a course necessary, to make and promulgate any such Ordinances for the good government of Burma, or any part thereof, as the circumstances of the case require, containing such provisions as, under the Constitution Act, it would have been competent for the Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will have, while in operation, the same force and effect as an Act of the Legislature, but every such Ordinance—

- (a) will be required to be laid before the Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature, unless both Chambers have in the meantime disapproved it by Resolution, in which case it will cease to operate forthwith ; and
- (b) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an Act of the Legislature ; it will also be subject to withdrawal at any time by the Governor.

*Provisions in the event of a Breakdown in the Constitution.*

- 55      53. The Governor will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the Government to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any authority in Burma, as appear to him to be necessary for the purpose of securing that the Government shall be carried on effectively.

A Proclamation so issued will have the same force and effect as an Act of Parliament ; will be communicated forthwith to a Secretary of State and laid before Parliament ; will cease to operate at the expiry of six months unless, before the expiry of that period, it has been approved by Resolutions of both Houses of Parliament ; and may at any time be revoked by Resolutions by both Houses of Parliament.

*Powers of the Legislature.*

**54.** *Subject to any special provisions that may be made in respect of the areas to be named in Schedules to the Constitution Act, the Legislature will have power to make laws—*

Replaces proposals 111 to 118 of the Indian White Paper.

- (a) *for all persons, courts, places and things within the territories for the time being belonging to His Majesty in Burma; and*
- (b) *for all subjects of His Majesty and servants of the Crown in Burma but without and beyond the territories for the time being belonging to His Majesty;*
- (c) *for all subjects of His Majesty being of Burman domicile without and beyond the confines of Burma; and*
- (d) *for the raising, maintaining, disciplining and regulating of officers, sailors, marines, soldiers, airmen and followers in his Majesty's Burman forces, wherever they are serving, in so far as they are not subject to the Naval Discipline Act or the Army Act or the Air Force Act or to any similar law enacted by the competent authority in India.*

*The power to make laws as above will include the power to repeal or amend laws enacted, before the separation of Burma from India, by the Indian Legislature or the Provincial Legislature of Burma.*

**55.** *It will be outside the competence of the Legislature to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of Burma or the law of British nationality. It will similarly not be competent to make any law affecting the Naval Discipline Act, the Army Act and the Air Force Act, or any similar laws enacted by the competent authority in India. It will also be provided that all authorities in Burma shall give full effect to such Indian laws in respect of persons in Burma to whom they apply. Neither will the Legislature be able to amend the Constitution Act except in so far as the Act itself provides.*

110

**56.** *Subject as above, the consent of the Governor, given at his discretion, will be required to the introduction in the Legislature of legislation which repeals or amends or is repugnant to any Act of Parliament extending to Burma, or any Governor's Act or Ordinance\* or which affects any Department or matter reserved for the control of the Governor, or religion or religious rites and usages, or the procedure regulating criminal proceedings against European British subjects.*

119

**57.** *The giving of consent by the Governor to the introduction of a Bill will be without prejudice to his power of withholding his assent to, or of reserving, the Bill when passed; but an Act will not be invalid by reason only that prior consent to its introduction*

121

\* A Governor's Ordinance for the purpose of this proposal means an Ordinance as described in proposals 51 and 52.

was not given, provided that it was duly assented to by the Governor, or by His Majesty in the case of Bills reserved for His Majesty's pleasure.

122

58. The Legislature will have no power to make laws subjecting in Burma any British subject (including companies, partnerships or associations incorporated by or under any law in force in Burma), in respect of taxation, the holding of property, the carrying on of any profession, trade, business or occupation, or the employment of any servant or agent or in respect of residence or travel within the boundaries of Burma, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth; but no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law.

A law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor, at his discretion, to be necessary in the interests of the peace and tranquillity of Burma or any part thereof.

123

59. The Legislature will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies and partnerships incorporated or constituted by or under the laws of the United Kingdom) to any disability or discrimination in the exercise of certain specified rights, if a Burman subject of His Majesty or a company, &c., constituted by or under the law in force in Burma, as the case may be, would not, in the exercise in the United Kingdom of the corresponding right, be subject in the United Kingdom to any disability or discrimination of the same or a similar character. The rights in question are the right to enter, travel and reside in any part of Burma; to hold property of any kind; to carry on any trade or business in, or with the inhabitants of, Burma; and to appoint and employ at discretion, agents and servants for any of the above purposes.

Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in Burma and the United Kingdom.

*60. It will be necessary to consider whether the principles underlying proposal 59 should be adopted as between Burma and India.*



61. An Act of the Legislature, however, which, with a view to the encouragement of trade or industry, authorises the payment of grants, bounties or subsidies out of public funds, will not be held to fall within the terms of paragraphs 58 and 59 by reason only of the fact that it is limited to persons or companies resident or incorporated in Burma, or that it imposes on persons or companies not trading in Burma before such Act was passed as a condition of eligibility for any such grant, bounty or subsidy, that a company shall be incorporated by or under the laws of Burma, or conditions as to the composition of the Board of Directors or as to the facilities to be given for training Burmans.

124

62. Provision will require to be made in regard to the registration in Burma of medical practitioners registered in the United Kingdom and in India. (See footnote to proposal 123 of the Indian White Paper.)

#### FINANCIAL POWERS AND RELATIONS.

##### *Property, Contracts and Suits.*

63. All legal proceedings which may be at present instituted by or against the Secretary of State in Council in respect of matters in or concerning Burma, will, subject to the reservations specified below, be instituted by or against the Government of Burma.

130

64. *Arrangements will be made for the determination of an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act; and provision will be made in the Act to give statutory effect to such determination and to such agreements as may be made thereunder by the respective Governments of the two countries.*

*The proposals contained in paragraphs 133 and 134 of the Indian White Paper will, if adopted, have the effect of maintaining as against the Secretary of State for India remedies which before the Act might have been enforced against the Secretary of State in Council, both as regards matters arising in India and matters arising in Burma. Provision will, therefore, be made in the distribution of assets and liabilities referred to above for the determination, as between the revenues of India and of Burma, of the ultimate liability in respect of such matters; and the Secretary of State will be given power to secure the implementing of any judgment or award against him in respect of a matter arising in Burma.*

65. *Subject to the agreed distribution provided for in the preceding paragraph, all property in Burma which immediately before the date of the coming into force of the Constitution Act was vested in His Majesty for the purposes of the government of India will be vested in His Majesty for the purposes of the government of Burma.*

131

132      66. Existing powers of the Secretary of State in Council in relation to property allocated under paragraph 64 and in relation to the acquisition of property and the making of contracts will be transferred to and become powers of the Governor. All contracts, &c., made under the powers so transferred will be expressed to be made by the Governor and may be executed and made in such manner and by such person as he may direct, but no personal liability will be incurred by any person making or executing such a contract.

133      67. The Secretary of State will be substituted for the Secretary of State in Council in any proceedings instituted before the commencement of the Act by or against the Secretary of State in Council.

*Statutory Railway Board.*

68. Provision will be made for vesting the management of the railways in Burma in a Statutory Railway Board constituted on lines analogous to those of the corresponding body to be set up in India.

*Borrowing Powers.*

146      69. The Government of Burma will have power to borrow for any of the purposes of the government of Burma upon the security of the revenues of Burma within such limits as may from time to time be fixed by law.

147      70. Arrangements will require to be made to secure that Burma sterling loans shall be eligible for Trustee status on appropriate conditions

*General.*

150      71. Provision will be made securing that the revenues of Burma shall be applied for the purposes of the government of Burma alone.

**THE HIGH COURT.**

168      72. The existing High Court established by Letters Patent will be maintained.

169      73. The Judges of the High Court will continue to be appointed by His Majesty and will hold office during good behaviour. The tenure of office of any Judge will cease on his attaining the age of 62 years, and any Judge may resign his office to the Governor.

74. The qualifications for appointment as Chief Justice or Judge will remain as at present, except that any person qualified to be a Judge will be eligible for appointment as Chief Justice, and that the existing provision, which requires that one-third of the Judges must be barristers or members of the Faculty of Advocates in Scotland and that one-third must be members of the Indian Civil Service, will be abrogated. 170

75. The salaries, pensions, leave and other allowances of Judges of the High Court will be regulated by Order in Council. But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to his disadvantage during his tenure of office. 171

76. The power to appoint temporary additional Judges and to fill temporary vacancies in the High Court will be vested in the Governor in his discretion. 172

77. Subject to any provision which may be made by the Legislature the High Court will have the jurisdiction, powers and authority vested in it at the time of the commencement of the Constitution Act. 173

78. The Legislature will have power to regulate the powers of superintendence exercised by the High Court over subordinate Courts. 175

79. *As regards appeals to the King in Council, subject always to the right of His Majesty to grant special leave, existing rights of appeal will be preserved, and in addition an appeal will lie without leave from the High Court to the Privy Council in any matter involving the interpretation of the Constitution Act.*

#### THE SECRETARY OF STATE'S ADVISERS.

80. The Secretary of State will be empowered to appoint *two persons (of whom one must have held office for at least 10 years under the Crown in Burma)* for the purpose of advising him. 176

81. Any person so appointed will hold office for a term of five years, will not be eligible for reappointment, and will not be capable, while holding his appointment, of sitting or voting in Parliament. 177

82. The salary of the Secretary of State's advisers will be £ a year, to be defrayed from monies provided by Parliament. 178

83. The Secretary of State will determine the matters upon which he will consult his advisers, and will be at liberty to seek their advice, either individually or together, on any matter. But so long as a Secretary of State remains the authority charged 179

by the Constitution Act with the control of any members of the Public Services in Burma he will be required to lay before his advisers *sitting jointly with the advisers, provision for whose appointment is made in proposal 176 of the Indian White Paper*, and to obtain the concurrence of the majority of the body so formed to any draft of rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member.

## THE PUBLIC SERVICES.

### *General.*

180 84. Every person employed under the Crown in Burma will be given a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of his duty.

181 85. Every person employed in a civil capacity under the Crown in Burma will hold office during His Majesty's pleasure, but he will not be liable to dismissal by any authority subordinate to the authority by whom he was appointed\* ; or to dismissal or reduction without being given formal notice of any charge made against him and an opportunity of defending himself, unless he has been convicted in a criminal Court or has absconded.

(a) *Persons appointed by the Secretary of State in Council before the commencement of the Constitution Act, and persons to be appointed by the Secretary of State thereafter.*

182 86. Every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that date or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded.

A summary of the principal existing service rights of persons appointed by the Secretary of State in Council is set out in Appendix I (Part I). These rights will be in part embodied in the Constitution Act and in part provided for by rules made by the Secretary of State.

NOTE.—*An appeal lying previously to the Governor-General of India will in future lie direct to the Secretary of State.*

\* Persons appointed by the Governor-General or by the Governor-General in Council and transferred permanently for service in Burma will be liable to dismissal by the Governor of Burma, and persons appointed by subordinate authorities in India and similarly transferred will be liable to dismissal by authorities in Burma of corresponding status.



87. The Secretary of State will after the commencement of the Act make appointments to the Services which will replace the Indian Civil Service and the Indian Police in Burma\* and the Ecclesiastical Department. The conditions of service of all persons so appointed, including conditions as to pay and allowances, pensions and discipline and conduct, will be regulated by rules made by the Secretary of State. It is intended that these rules shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the Act.

183

88. Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded.

184

89. The Secretary of State will be required to make rules regulating the number and character of posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State, and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post for a period longer than three months without the previous sanction of the Secretary of State or save under conditions prescribed by him.

185

90. Conditions in regard to pensions and analogous rights will be regulated in accordance with the rules in force at the date of the Constitution Act, and the Secretary of State will have no power to make any amending rules varying any of these conditions so as to affect adversely the pension, &c., of any person appointed before the variation is made. An award of pension less than the maximum pension admissible will require the consent of the Secretary of State. The pensions of all persons appointed before the commencement of the Constitution Act will be exempt from Burma taxation if the pensioner is residing permanently outside Burma. The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Burma taxation if the pensioner is residing permanently outside Burma.

186

91. The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council made on an Address of both Houses

187

\* See Introduction, paragraph 19.

of Parliament designates another authority for the purpose. Any rule made by the Secretary of State will require approval as specified in proposal 83, unless and until both Houses of Parliament by Resolution otherwise determine.

188 92. Provision will be made whereby any person appointed by the Crown who is or has been serving in Burma in a civil capacity and any person who, though not appointed by the Secretary of State in Council before the commencement of the Constitution Act or by the Secretary of State after its commencement, holds or has held a post borne on the cadre of the Indian Civil Service may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State in Council or by the Secretary of State, as the Secretary of State may decide to be applicable to his case.

189 93. A statement of the vacancies in, and the recruitment made to, the Services and Departments to which the Secretary of State will appoint after the commencement of the Constitution Act will be laid annually before both Houses of Parliament.

A statutory enquiry will be held into the question of future recruitment to the Services which will replace the Indian Civil Service and the Indian Police after a period to be determined.\*

\*The decision on the results of this enquiry, with which the Government of Burma will be associated, will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament.

(b) *Persons appointed or to be appointed otherwise than by the Secretary of State in Council or the Secretary of State.*

190 94. The Government of Burma will appoint and, subject to the following paragraphs, determine the conditions of service of all persons in the service of Government other than persons appointed by the Crown, by the Secretary of State in Council, by the Secretary of State, or by the Governor in discharge of the responsibility imposed upon him under the proposals contained in paragraph 10.

95. *Provision will be made for the compulsory transfer to the service of the Government of Burma of persons recruited by the Government of India† before the commencement of the Constitution Act for service in Burma alone.*

191 96. Every person in the service of the Government of Burma at the commencement of the Constitution Act, and all persons in the service of the Government of India at the date of the commencement of the Burma Constitution Act and transferred thereafter to that of the Government of Burma, will continue to enjoy all service rights they enjoyed at the date of such transfer. A summary of the principal existing rights is set out in Appendix I (Part II).

\* See paragraph 19 of Introduction.

† See paragraph 21 of Introduction.

*NOTE.—In the case of persons transferred from the service of the Government of India to that of the Government of Burma, appeals will in future lie only to the appropriate authority in Burma.*

**97.** No person appointed by an authority other than the Secretary of State in Council who was serving in Burma in a civil capacity before the commencement of the Constitution Act, and no person in the service of the Government of India at the date of the commencement of that Act and transferred thereafter to service in Burma, will have his conditions of service in respect of pay, allowances, pension or any other matter adversely affected, save by an authority in Burma competent to pass such an order on the 8th March 1926 or with the sanction of such authority as the Secretary of State may direct.

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**98.** No rule or order of the Government of Burma affecting emoluments, pensions, provident funds, or gratuities, and no order upon a memorial will be made or passed to the disadvantage of an officer appointed to a Central Service, Class I or Class II, or to a Burma Provincial Service, before the commencement of the Act, without the personal concurrence of the Governor. No post in a Service which replaces a Central Service, Class I or Class II, or in any Service replacing a Provincial Service shall be brought under reduction if such reduction would adversely affect any person who, at the commencement of the Constitution Act, was a member of those Services, without the sanction of the Governor or, in the case of any person appointed by the Crown or by the Secretary of State in Council, of the Secretary of State.

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**99.** Every person, whether appointed before or after the commencement of the Constitution Act, who is serving in a civil capacity in a whole-time permanent appointment, will be entitled to one appeal against any order of censure or punishment, or against any order affecting adversely any condition of service, pay, allowances, or pension, or any contract of service, other than an Order made by the Government in the case of officers serving under its control.

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(c) *Public Service Commission.*

**100.** There will be a Public Service Commission for Burma. The members of the Public Service Commission will be appointed by the Governor, who will also determine at his discretion their number, tenure of office, and conditions of service, including pay, allowances, and pensions, if any. The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in Burma. The eligibility of the other members for further employment under the Crown in Burma will be subject to regulations made by the Governor.

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- 198      101. The emoluments of the members of the Public Service Commission will not be subject to the vote of the Legislature.
- 199      102. The Public Service Commission will conduct all competitive examinations held in Burma for appointments to the Government service. The Government will be required to consult it on all matters relating to methods of recruitment, on appointments by selection, on promotions, and on transfers from one service to another, and the Commission will advise as to the suitability of candidates for such appointments, promotions or transfers.
- 200      103. The Government will also be required, subject to such exceptions (if any) as may be specified in regulations to be made by the Secretary of State or Governor, as the case may be, to consult the Public Service Commission in connection with all disciplinary orders (other than an order for suspension) affecting persons in the public services in cases which are submitted to the Government for orders in the exercise of its original or appellate powers; in connection with any claim by an officer that Government should bear the costs of his defence in legal proceedings against him in respect of acts done in his official capacity; *in connection with any claim by an officer that he has suffered loss of rights existing at the date of his transfer to service under the Burma Government*; and in connection with any other class of case specified by regulations made from time to time by the Secretary of State or Governor as the case may be. But no regulations made by the Governor will be able to confer powers on the Commission in relation to any person appointed by the Secretary of State without the assent of the Secretary of State.
- 201      104. The Government will be empowered to refer to the Commission for advice any case, petition, or memorial if they think fit to do so; and the Secretary of State will be empowered to refer to the Commission any matter relating to persons appointed by him on which he may desire to have the opinion of the Commission.



## APPENDIX I.

## (PART I.)

*List of principal existing Rights of Officers appointed by the Secretary of State in Council.*

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1)).
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed (Classification Rule 55).
3. Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights or compensation in lieu thereof (Section 96B (2)).
4. Regulation of conditions of service, pay and allowances, including Burma allowance, and discipline and conduct, by the Secretary of State in Council (Section 96B (2)).
5. Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable notwithstanding any rules made under Section 96B (Section 96B (5)).
6. Non-votability of salaries, pensions and payments on appeal (Sections 67A (3) (iii) and (iv) and 72D (3) (iv) and (v)).
7. The requirement that rules under Part VII-A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (Section 96E).
8. Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919 (Section 96B (3)).
- 9.—(i) Reservation of certain posts to members of the Indian Civil Service (Section 98).  
(ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State in Council (Section 99), or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council (Section 100).
10. Determination of strength (including number and character of posts) of All India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or Local Government (Classification Rules 24 and 10).
11. Provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council (Classification Rule 25).
12. Appointment of anyone who is not a member of an All-India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council (Classification Rule 27).

13. Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service, Class I, which would adversely affect any officer appointed by the Secretary of State in Council, to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March 1926, or to the creation of any Specialist Post which would adversely affect any member of an All-India Service, the Indian Ecclesiastical Establishment, and the Indian Political Department. (Provisos to Classification Rules 32, 40 and 42.)
14. Personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an officer of an All-India Service (Devolution Rule 10).
15. Personal concurrence of the Governor required to an order of posting of an officer of an All-India Service (Devolution Rule 10).
16. Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (Section 96B (1)).
17. Right of appeal to the Secretary of State in Council, (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification Rules 56, 57 and 58).
18. Right of certain officers to retire under the regulations for premature retirement.

(PART II.)

*List of principal existing Rights of Persons appointed by Authority other than the Secretary of State in Council.*

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1)).
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed, subject to certain exceptions (Classification Rule 55).
3. Regulation of the strength and conditions of service of the Central Services, class I and class II, by the Governor-General in Council and of Provincial Services by Local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March 1926 should be made without the previous sanction of the Governor-General in Council (Classification Rules 32, 33, 36, 37, 40 and 41).

4. Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10).
5. Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services the right of one appeal against an order imposing a penalty (Classification Rules 56, 57, 58 and 54).

### (PART III.)

#### NON-VOTABLE SALARIES, &C. (CIVIL).

The salaries and pensions of the following classes of persons are non-votable:—

- (a) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter;
- (b) persons appointed before the first day of April 1924, by the Governor-General in Council or by a Local Government to Services and posts classified as superior;
- (c) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service;
- (d) members of the Public Service Commission;
- (e) holders in a substantive capacity before the commencement of the Constitution Act of posts in an Indian Central Service.

The following sums payable to such persons fall also under item (v) of paragraph 47, namely:—

Sums payable to, or to the dependants of, a person who is, or has been, in the service of the Crown in Burma under any Order made by the Secretary of State in Council, by a Secretary of State, by the Governor-General in Council, or by the Governor of Burma upon an appeal preferred to him in pursuance of Rules made under the Constitution Act.

For the purposes of the proposals in this Appendix the expression "salaries and pensions" will be defined as including remuneration, allowances, gratuities, contributions, whether by way of interest or otherwise, out of the revenues of Burma to any Provident Fund or Family Pension Fund, and any other payments or emoluments payable to, or on account of, a person in respect of his office.

## APPENDIX II.

(See paragraph 18 of Introduction.)

PROVISIONAL LIST OF AREAS TO BE INCLUDED IN SCHEDULE A AND  
SCHEDULE B TO THE CONSTITUTION ACT.

|                          |     |     | <i>Schedule A.</i>   |
|--------------------------|-----|-----|--|
| <u>District</u>          |     |     | <u>Area</u>  |
| 1. Federated Shan States | ... | ... | Northern Shan States.<br>Southern Shan States.   |
| 2. Arakan Hill Tracts    | ..  | ..  | Arakan Hill Tracts (late Hill District of Arakan).   |
| 3. Chin Hills...         | ... | ... | Chin Hills (including the Pakòkku Hill Tracts).  |
| 4. Myitkyina ...         | ... | ... | Myitkyina Kachin Hill Tracts.<br>Mogaung Kachin Hill Tracts.<br>Kamaing Kachin Hill Tracts.<br>Sadôn Kachin Hill Tracts.<br>Htawgaw Kachin Hill Tracts.<br>Putao Sub-Division (late Putao District). |
| 5. Bhamo ...             | ... | ... | Sinlum Kachin Hill Tracts.<br>Shwegu Kachin Hill Tracts.   |
| 6. Upper Chindwin ...    | ... | ... | Somra Tract.<br>Kanti State.<br>Thaungdut State.   |
| 7. Katha ...             | ... | ... | Katha Kachin Hill Tracts.  |

*Schedule B.*

|                       |     |     |   |
|-----------------------|-----|-----|---|
| 1. Myitkyina ...      | ... | ... | Other than the Hill Tracts specified in item 4 of Schedule A.   |
| 2. Bhamo ...          | ... | ... | Exclusive of the Hill Tracts specified in item 5 of Schedule A. |
| 3. Upper Chindwin ... | ... | ... | Homalin Sub-division and the Tamu Township of the Mawlaik.      |
| 4. Salween ...        | ... | ... |   |



## RECORD V

### REPORT OF THE COMMITTEE ON INDIAN RESERVE BANK LEGISLATION

MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA.

The Federal Structure Sub-Committee of the First Round Table Conference recommended that, "with a view to ensuring confidence in the management of Indian credit and currency . . . efforts should be made to establish on sure foundations and free from any political influence, as early as may be found possible, a Reserve Bank, which will be entrusted with the management of the currency and exchange." In the course of the discussions of the Third Round Table Conference I undertook that representative Indian opinion would be consulted in the preparation of proposals for the establishment of the Reserve Bank, including those relating to the reserves. In accordance with this undertaking a Committee was appointed to advise the Government of India and myself on the subject of the required legislation.

The Committee, which sat in July, has now submitted its Report. The prime purpose of the Report is to facilitate the drafting of the Reserve Bank Bill which will, in all probability, be submitted to the Indian Legislature in the course of September, with a view to its possible passage into law later in the year.

I present the Report to the Committee because of its connection with the proposals relating to financial responsibility in the White paper (see paragraph 32 of the Introduction).

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## Report of the Committee on Indian Reserve Bank Legislation

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1. It was recommended by the Federal Structure Sub-Committee of the First Round Table Conference that, "with a view to ensuring confidence in the management of Indian credit and currency, . . . efforts should be made to establish on sure foundations and free from any political influence, as early as may be found possible, a Reserve Bank, which will be entrusted with the management of the currency and exchange."\* The Financial Safeguards Committee of the Third Round Table Conference recommended "that steps should be taken to introduce into the Indian Legislature a Reserve Bank Bill conceived on the above lines as soon as possible."† In the Report of that Committee it was also placed on record that "The Secretary of State undertook that representative Indian opinion would be consulted in the preparation of proposals for the establishment of the Reserve Bank including those relating to the reserves." The present Committee has been set up in pursuance of that undertaking.

2. We understand that the Bill, when drafted, is to be placed before the present Indian Legislature with a view to its being brought into force before the expiry of the existing Constitution. The provisions of the Bill, therefore, will have to be designed to fit in with the existing Constitution, but in discussing them we have kept in view the conditions contemplated under the new Federal Constitution and endeavoured to frame proposals on lines which will require the minimum of adaptation to those conditions.

A complication arises from the uncertain future of Burma. We have, however, assumed that Burma, if separated, will continue to utilise the Indian currency system, and that no material changes in the Reserve Bank Act will be required.

3. We fully accept the principle that the Reserve Bank should be free from any political influence. The best device which the practical experience of other countries has evolved for achieving this object is that the capital of the Bank should be held by private shareholders,‡ and we recommend that this plan should be adopted in the case of India.

4. In formulating a scheme for the constitution of the Board of Directors, we have borne in mind the importance of securing the

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\* Second Report of the Federal Structure Sub-Committee, paragraph 18.

† Report of the Committee on Financial Safeguards, paragraph 4.

‡ Rai Bahadur Ram Saran Das records his view that the Bank should be State-owned.

15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
RESERVE BANK LEGISLATION.

representation of the economic life of India as a whole, while at the same time guarding against undue influence in the affairs of the Bank by sectional interests, acquired through the control of voting power. The proposals below are designed to fulfil these aims, but their efficacy will depend in the first place upon proper restriction of voting power. We propose that the denomination of the shares should be Rs. 500. On this basis we recommend that the minimum voting qualification should be two shares, which must have been held for at least six months, and that the maximum number of votes that may be exercised by any one shareholder should be ten. If such a limitation is imposed on voting power we do not think it necessary to place any restriction on the amount of capital to be held by any one shareholder. Such a restriction would place undesirable obstacles in the way of free marketing of the shares.

*The Board of the Bank.*

5. We consider that the Board should be as small as practicable. The majority of the Board of Directors should in our opinion derive their mandate from the shareholders. We do not recommend that any special provision should be made for the representation on the Board of commercial bodies as such. In view, however, of the fact that in the particular circumstances of India election may fail to secure the representation of some important elements in the economic life of the country, such as agricultural interests, we recommend that a minority of the Board should be nominated by the Governor-General in Council under the present Constitution and by the Governor-General at his discretion under the new Constitution, it being understood that this power would be exercised to redress any such deficiencies. We agree generally that the Board should be constituted as follows :—

- 8 Directors representing the shareholders ;
- 4 Directors nominated by the Governor-General in Council ;
- 1 Governor.
- 1 Deputy-Governor (or two, if two are appointed), with no voting power ;\*
- 1 officer of Government with no voting power.

We contemplate that the Governor would ordinarily attend all meetings of the Board, but if he is unable to do so on any particular occasion we consider that his vote should be exercised by a Deputy-Governor authorised by him to act as his substitute.

\* Some members of the Committee think that the Deputy Governors should have full voting power.

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[Continued.]

6. The plan which we recommend for the appointment of Directors to represent the shareholders is set forth in the next paragraph. It involves the division of India (including for this purpose Burma) into five "areas"; the election, by the shareholders resident in each area, of members of a Local Board; and the selection by the latter, from among themselves, of Directors to represent the respective areas on the Central Board.

7. In Appendix II will be found, in tabular form, our proposals for the geographical division into areas, and for the allocation among them of seats on the Central Board, and the initial allocation of share capital. It is suggested that Bombay should be the headquarters for the Western area (two seats on the Central Board), Calcutta for the Eastern area (two seats), Delhi for the Northern area (two seats), Madras for the Southern area (one seat), and Rangoon for the Burma area (one seat). (The number of Local Boards for this purpose should not be capable of increase.) The electoral scheme in the 1928 Bill provided for the inclusion of all the Indian States in the "Delhi Area." We consider, however, that the States should for this purpose fall into their natural geographical divisions, and our proposals, shown in detail in Appendix II, have been made on this basis. We propose that five members should be elected to each Local Board by the shareholders "resident" in the area according to the definition given in clause 4 (4) of the 1928 Bill. The members so elected should appoint, from among themselves, the Director or Directors to represent the area on the Central Board. Provision should be made to enable a substitute Director to be appointed from and by a Local Board in case a Director representing it is unable to attend a particular meeting.

8. Clause 6 of the 1928 Bill provides for the opening of offices at the headquarters of the five areas which we propose. We observe that this clause as it stands would oblige the Bank to establish a branch in London. We understand that it is the recognised practice of Central Banks to conduct their operations in another country through the agency of the Central Bank of that country. We do not consider that the Board should be precluded by statute from following this practice. We therefore recommend that the words "and London" should be omitted from clause 6, the effect of which will be to make the establishment of a London branch optional. Should the Bank arrange to employ the Bank of England as its agent in London, we contemplate that the arrangement would be reciprocal and that the Bank of England would employ the Reserve Bank as its agent in India.

9. Apart from their functions in the machinery by which Directors are appointed, the Local Boards would have no



15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
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executive duties, except such as may be delegated to them by the Central Board. Otherwise they would be purely advisory bodies. In particular, they might play a valuable part in the scrutiny of commercial paper, analogous to the functions of the discount committees established in Belgium, Bulgaria, Japan and Lithuania. With a view to ensuring that all appropriate interests, agriculture and the Indian States in particular, are adequately represented, the Central Board should be empowered to nominate to each Local Board not more than three additional members. These additional members should be full members of the Local Board, except that they should not be eligible to be returned as representatives of the area on the Central Board, nor to take part in the selection of such representatives.

10. As regards the qualification of elected Directors, we consider a provision on the lines of sub-clause 2 of clause 11 of the Bill of 1928 to be desirable. We would also provide that within six months of their appointment to the Central Board the four nominated Directors must become possessed of the same share qualification as is prescribed for Directors elected by the shareholders. We do not, of course, suggest that a share qualification must be acquired by the Governor, the Deputy Governor or Governors, or the Government officer. We accept the disqualifications set out in clause 8 of the 1928 Bill, to which, however, we would add "Insolvency." We have considered whether the disqualification of Government officials should apply also to officials of Indian States. We are all agreed that, so far as elected members of Central or Local Boards are concerned, this disqualification should apply, but as regards nominated directors, either on the Central or Local Boards, the Indian States representatives have pressed that an exception should be made. Recognising that there might on occasions be practical difficulties in finding suitable non-official representatives of the Indian States, a majority of the Committee are prepared to recommend an exception in this case, provided that it shall not apply to officials of the Government of India lent to an Indian State.

11. The qualifications and disqualifications applicable to members of a Local Board, whether elected or nominated, should, subject to what is said in paragraph 10 above, be the same as those applicable to the elected members of the Central Board.

12. We recommend, in order that the Reserve Bank may be able to commence operations, that the first appointment of Directors should be made by the Governor-General in Council, suitable arrangements being made for retirement in rotation.

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13. The method of appointing the Governor is a matter of the highest importance. It is essential that this officer should command general confidence, both in India and abroad. As regards the appointment of the Governor and Deputy Governor (or Deputy Governors), the majority of the Committee hold that the Governor-General in his discretion should be the appointing authority when the new Constitution comes into force. Those who were of this opinion felt no doubt that before making these appointments the Governor-General would ascertain the views of the Board of the Bank. A minority of the Committee however, hold that these appointments should be made by the Board of Directors, subject to the approval of the Governor-General. An attempt to harmonise these views was made by proposing that the existing provision of the Imperial Bank constitution should be followed in drafting the Bill, and that the Governor and Deputy Governors should be appointed by the Governor-General after consideration of the recommendations of the Board of the Bank. This solution, as a compromise, was acceptable to all members of the Committee except four.

*Share Capital and Share Registers.*

14. We recommend that the original share capital of the Bank should be Rs. 5 crores, divided into shares of Rs. 500 each, which should be fully paid; that the initial allocation as between the five areas should be on the lines indicated in Appendix II; that a separate share register should be maintained in each of the five areas; and that shares should be transferable from one register to another, so that there would be a free market in them, but shareholders should only be entitled to vote in respect of the areas in which they are resident.

*Structure of the Bank.*

15. The two previous Bills provided for separate Issue and Banking Departments as in the case of the Bank of England, and we understand that this provision has met with general approval in India. We recommend that the new Bill should be drafted on this basis.

*Business of the Bank.*

16. We approve generally of the provisions of clauses 17 and 18 of the Bill of 1928, but we consider that some extension may be required to enable the Indian States to participate in the Reserve Bank Scheme, and detailed suggestions of this nature are included in Appendix I.

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[Continued.]

17. The Banking Enquiry Committee recommended\* that additional provision should be made enabling the Bank to make loans and advances on the security of moveable goods, wares, and merchandise, as well as against the warehouse warrants and warehouse receipts representing such goods. We do not feel able to recommend any such provision, since it would tend to render the Bank's resources less liquid, and might involve it in undesirable competition with commercial banks.

18. An important question arises in regard to clause 18. Since the Hilton Young Commission reported and the previous Bills were drafted, Central Banking practice in other countries has developed in the direction of utilising open market operations to an increasing extent for the purpose of regulating credit. Clause 18 as it stands might be read as necessitating a meeting of the Board on each occasion on which such operations are required. Since action may be necessitated, for the purpose of regulating credit, with a degree of urgency which does not permit prior consultation with the Board, it should be made clear that the Board is not precluded from delegating to the Governor powers in this behalf for the above-mentioned purpose.

*Exchange Obligations of the Bank.*

19. The questions which arise in connection with the exchange obligations to be imposed on the Bank present special difficulty in existing circumstances. In the prevalent state of monetary disorganisation throughout the world, it is impossible to incorporate in the Bill provisions which would necessarily be suitable when monetary systems generally have been re-cast and stabilised. In these circumstances we consider that the only sound course for India is to remain on the sterling standard. On this basis the exchange obligations incorporated in the Bill must necessarily be in accord with the rupee-sterling ratio existing at the time when the Bill is introduced. This statement does not, however, imply any expression of opinion on the part of the Committee on the merits or demerits of the present ratio. The ratio provisions in the Bill are designed to make it clear that there will not be any change in the *de facto* situation by the mere coming into operation of the Reserve Bank Act.

A considerable majority of the Indian Delegates feel it their duty to record their view that a suitable exchange ratio is one of the essential factors for the successful working of the Reserve Bank. They point out that considerable changes have occurred in the currency bases and policies of almost all the countries of the world

\* Report of the Indian Central Banking Enquiry Committee of 1931, paragraph 607.

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[Continued.]

in the last few years. In their view it is for the Government of India and the Legislature to examine these and all other relevant considerations with a view to ensuring that the minimum possible strain is placed on the currency system of India.

We are all agreed that it should, in any case, be made clear in the Preamble that the whole question of the monetary standard best suited to India will have to be reviewed when the international monetary position has clarified itself and become sufficiently stable to make it possible to frame more permanent provisions.

20. It will be necessary in the Bill to provide limits to the range of exchange fluctuations by prescribing upper and lower points at which the Bank will be required to buy and sell on demand sterling for immediate delivery. According to the practice now prevailing upper and lower points have in fact been retained as though the rupee was still on a gold basis. As the fixing of new points would in any case have to be on an arbitrary basis we recommend that this practice, to which the public have become accustomed, should be continued.

*Assets and Liabilities of the Issue Department.*

21. The addition of 40 crores to the liabilities of the Issue Department for the purpose of providing for rupee redemption requires reconsideration in view of the large return of rupees from circulation since the Hilton Young Commission reported and the indications as to the probable trend of the movement of rupees in and out of circulation in the future. We recommend that, as the future return of rupees over a series of years is likely to be considerably less than in the past few years, the rupee redemption fund should be dispensed with and in its place the following scheme should be adopted:—

- (1) The amount of rupees transferred at the outset to the Bank should not exceed Rs. 50 crores.
- (2) Any surplus of rupees which this arrangement would enable Government to remove from the reserve should be held by Government in a separate account, the silver being held as bullion, not as coin. Subject to further consideration by the Government of India any proceeds from the realisation\* of such rupees should not be used, except for the purpose specified in (3) below.

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\* Some of us wish to make it clear that in accepting this scheme we do not wish to be regarded as endorsing any policy of selling silver.



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- (3) In any year in which the minimum holding of silver rupees by the Bank exceeded 50 crores of rupees or one-tenth of the total amount of the reserve, the Bank would have the right to make over the surplus to Government to an amount not exceeding 5 crores of rupees in any year, and Government would be required to pay full value for these (to the extent of 40 per cent. in sterling or other external assets acceptable to the Bank if the Bank so required, and if the Bank's external assets at the time did not exceed 50 per cent. of its total reserve).
- (4) If in any year the Bank's maximum holding fell below the amounts indicated above, Government would similarly have the right to sell rupees to the Bank up to a maximum of 5 crores in any one year.

We observe in this connection that the omission of any provision for a specific rupee redemption fund makes it all the more necessary that the reserves of the Bank should at the outset provide an ample margin over the statutory amount. Under the proviso to clause 33 of the 1928 Bill, the initial proportion of gold and sterling assets must be not less than one-half of the liabilities of the Issue Department. We do not propose any alteration in this figure in the new Bill, but we think that this proportion may not necessarily be adequate, and we recommend that the question whether a higher proportion is required at the outset should, before the Bank is set up, be carefully considered by Government in the light of all the prevailing circumstances.

22. As regards the holding of Government of India rupee securities, the question was raised whether the limits proposed in the second proviso of clause 31 (3) might not prove unduly restrictive of the Bank's open market operations; and we recommend that this point should be further considered in India.

23. With regard to the remainder of the reserve, we recommend that "Gold Securities" should be replaced by "Sterling Securities." The holding of gold securities would be not merely inappropriate to a sterling standard, but, in the present state of uncertainty, a possible source of weakness. As regards the aggregate proportion of gold coin or bullion and sterling securities to be held, we recommend that the minimum figure of 40 per cent. proposed by the Hilton Young Commission and adopted in the previous Bills should be retained.

24. As regards the distribution of this minimum between sterling and gold various considerations have to be taken into account. On the one hand it must be recognised that the Bank will always require to hold a substantial amount of sterling in

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order to enable it to fulfil its sterling obligations. Indeed it might be argued that so long as the rupee is not based on a gold standard there is no logical necessity to prescribe a minimum holding of gold and that any such limitation would restrict the freedom of the Bank's operations and would, to that extent, be a source of weakness in relation to its obligations to maintain the currency standard. There is, moreover, a further argument that as gold carries no interest any undue proportion of gold holdings would unjustifiably reduce the Bank's profits and so impose, indirectly, an unnecessary burden on the Indian taxpayer. As against these considerations, must be weighed the deep and widespread feeling in India in favour of holding gold as affording ultimately the most reliable form of reserve, a feeling which may necessitate some provision for a minimum gold holding in order to secure the confidence of the Indian public in the stability of the Bank. While individual members of our Committee have been inclined to attach varying degrees of importance to these different considerations we have been able to reach agreement on a recommendation that the Bill should prescribe a minimum gold holding of Rs. 35 crores.\*

The minimum of Rs. 35 crores represents actually about 20 per cent. of the present note liability. Should, however, through any considerable expansion of the note issue, this percentage fall below 15 per cent., some members of the Committee are of opinion that the position should be immediately reviewed.

25. The question of valuation of the gold assets presents some difficulty. At a time when monetary standards are completely disorganised, there is, in fact, no logical figure applicable to the valuation of gold reserves. We consider that the best course would be to retain the valuation laid down in sub-clause (4) of clause 31. This would be in accordance with the practice at present followed by the Bank of England and in India, where gold continues to be valued at the old parity. Under this arrangement the existing holdings would be covered against loss by a wide margin. The possibility would obviously be present that the Bank might gain a large premium on the gold handed over to it by Government. The question as to how such premium should be dealt with, especially in the event of sales being made in the intermediate period pending revaluation of the gold, raises complex practical issues which we have not fully discussed. In

\* Sir Parshotamdas Thakurdas and Rai Bahadur Ram Saran Das dissent from the proposal to omit any provision for a minimum percentage of gold to the note issue.

Sir Campbell Rhodes would prescribe no minimum but leave the Board complete freedom in the matter of gold reserves.

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principle such profits should belong rather to the Government than to the Bank, but our view is that this unrealised margin should in some way or other be kept available for strengthening the position of the currency reserves. We recommend that detailed proposals should be worked out by the Government of India for consideration during the passage of legislation on this subject.

26. We approve generally of the provisions of clause 41 of the 1928 Bill, relating to the suspension of reserve requirements and the connected tax provision. We\* think it would be well to bring clause 41 into a closer connection with clause 31 in order to make it clear that the "minimum" reserve can, and should, be utilised whenever this is called for by the circumstances.

*Reserve Fund and Allocation of Surplus.*

27. We approve, generally, the provisions for "Reserve Fund and Allocation of Surplus" in clause 46 of the 1928 Bill, subject to the following modifications in regard to the distribution of dividends. The appropriate rate for the fixed dividend must depend to some extent on the return on comparable securities at the time of issue of the shares. We recommend that the Bill should empower the Governor General in Council to fix this rate, subject to a maximum of 5 per cent. Provision should also be made, on the lines of the Third Schedule to the 1928 Bill, for a gradually increasing dividend up to a maximum of 6 per cent. In determining the fixed rate of dividend the Governor-General in Council should take into account, not only the yield on Government long-term securities, but also the desirability of attracting the small investor in the mofussil and thereby securing a wide distribution of the shares.

*Scheduled Banks.*

28. We approve the principle of clause 44 of the 1928 Bill, under which Scheduled Banks are required to maintain minimum balances with the Reserve Bank. Some doubts have been expressed as to the appropriateness of (a) the criterion for inclusion in the schedule, viz. Rs. 3 lakhs paid-up capital and reserves; and (b) the percentages prescribed in sub-clause (1) of that clause. We recommend that these two questions should be reconsidered in India together with the question whether the criterion should be based on the amount of deposits rather than on the paid-up capital and reserves.

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\* Except Sir Purshotamdas Thakurdas and Rai Bahadur Ram Saran Das.

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*Relations of the Reserve Bank with the Imperial Bank of India.\**

29. We recommend that the Reserve Bank should be required to enter into an agreement with the Imperial Bank on the general lines of clause 45 of the 1928 Bill, but we consider that the period of 25 years prescribed in that clause is too long, and we suggest that this point should be further considered by the Government of India. The initial period, however, should be of substantial duration, with provision thereafter for termination on several years' notice given by either side. The agreement should further contain a stipulation that its continuance is dependent on the maintenance of a sound financial position by the Imperial Bank.

30. With regard to the Second Schedule to the 1928 Bill, we approve of the provision that the Imperial Bank should be the sole agent of the Reserve Bank at all places in British India where there is a branch of the Imperial Bank of India and no branch of the Banking Department of the Reserve Bank. It should be understood that this only applies to branches that are in existence at the time when the Act comes into force. We also agree that the Imperial Bank shall not, without the approval of the Reserve Bank, open any branch in substitution for a branch existing at the time when the agreement comes into force. As regards other branches that may be opened in the future, the Reserve Bank should be under no obligation to employ the Imperial Bank and should be free to make its own arrangements. The agency terms provided for in paragraphs 2 and 3 of Schedule II will require reconsideration in the light of present circumstances, and we recommend that the Government of India should frame revised terms in consultation with the Imperial Bank.

31. It was submitted to us that, apart from the question of remuneration for services to be rendered, the Imperial Bank of India has a moral claim for compensation in respect of its disappointed expectations and of commitments which it undertook, by arrangement with Government, before the institution of the Reserve Bank was contemplated. It was suggested to us that such compensation should be given in the form of an allotment of

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\* Owing to their connection with the Imperial Bank, Sir Edward Benthall and Sir Purshotamdas Thakurdas took no part in the discussion of this question.

Sir Akbar Hydari also desired to have his view recorded that the objects for which the early establishment of the Reserve Bank had been found necessary would be much more speedily attained, at the outset at least, if the Imperial Bank of India was, with suitable modifications, made the instrument for attaining these objects, rather than by the creation orthwith of an entirely new institution.



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a part of the share capital of the Reserve Bank to shareholders of the Imperial Bank. We do not consider that the question whether the Imperial Bank is entitled to compensation is within the purview of this Committee, but, in any case, we cannot recommend any special allocation of Reserve Bank shares to the shareholders of the Imperial Bank, as this would be inconsistent with our scheme for the distribution of shares on the broadest possible basis throughout India. We have no doubt, however, that any claim for compensation which may be put forward by the Imperial Bank will receive due consideration by the authorities in India. If the claim is conceded we consider that the compensation should be given in some other form.

*General.*

32. The Committee considered whether the powers to be given to the Governor-General in Council in various clauses of the Bill should, under the new Federal Constitution, be exercised by the Governor-General at his discretion or by the Governor-General on the advice of his Ministers. In agreeing to the recommendations recorded below, some of the members took into account the powers which they assume the Governor-General will possess under the new Constitution Act to intervene if on any occasion his special responsibilities are involved.

In clause 41 of the 1928 Bill (Suspension of Reserves) no agreement was reached between the three alternatives of the exercise of these powers—

- (a) by the Governor-General at his discretion;
- (b) by the Federal Government; or
- (c) by the Federal Government with the approval of the Governor-General at his discretion.

In clauses 43 and 52 of the 1928 Bill (Forfeiture of Right of Note Issue and Liquidation) it was agreed that the powers should be exercised by the Federal Government with the approval of the Governor-General at his discretion.

In clause 53 (Regulations) it was agreed that the power should be exercised by the Federal Government.

33. In the preceding paragraphs we have dealt with all the major questions in respect of which we recommend any departure from the provisions of the 1928 Bill. In other respects we recommend that the principles of that Bill should be followed in drafting the new Reserve Bank Bill. There are, however, a number of minor points on which we recommend modification of the provisions of the 1928 Bill, either as being consequential on our major recommendations or desirable on other grounds.

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These suggestions are set forth in Appendix I, and for convenience of reference we annex to our Report a copy of the 1928 Bill.

34. In conclusion we desire to express our obligation to our Secretaries, Mr. G. H. Baxter and Mr. A. T. Williams and other members of the staff concerned for the invaluable assistance which they have rendered both in our proceedings and in the drafting of our Report.

R. A. MANT,  
*Deputy Chairman.*

N. N. ANKLESARIA.  
E. C. BENTHALL.  
C. C. BISWAS.  
RAM SARAN DAS.  
H. DENNING.  
A. HYDARI.  
MIRZA M. ISMAIL.  
COWASJEE JEHANGIR (jun.).  
L. J. KERSHAW.  
C. KISCH.  
V. T. KRISHNAMA CHARI.  
H. P. MODY.  
A. RAMASWAMI MUDALIAR.\*  
CAMPBELL RHODES.  
GEORGE SCHUSTER.  
PHIORZE SETHNA.  
H. STRAKOSCH.  
PURSHOTAMDAS THAKURDAS.  
S. D. WALEY.  
MOHD. YAMIN KHAN.  
ZAFRULLA KHAN.

G. H. BAXTER,  
A. T. WILLIAMS,  
*Secretaries.*

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\* Mr. Ramaswami Mudaliar has signed on behalf of Mr. Iyengar in regard to all matters on which agreement was reached before Mr. Iyengar left for India. In regard to other matters, Mr. Iyengar has reserved the right to record a supplementary note if he finds this necessary.

## APPENDIX I.

(See paragraph 33 of Report.)

*Title and Preamble.*—The reference to “Gold Standard Currency” will require amendment.

*Clause 1 (1).*—This clause will need to be similarly amended.

*Clause 1 (2).*—We have assumed that Burma, if separated, will continue to utilise the Indian currency system. If the decision ultimately reached is otherwise, an amendment of this sub-clause will be necessary.

*Clause 1 (3).*—A modification of dates will be necessary.

*Clause 1 (4).*—We recommend that this sub-clause should provide that Chapter III shall be in force for a period of 25 years, and shall continue in force thereafter until revoked or modified by further legislation.

*Clause 2 (g).*—The definition of a “gold standard country” will have to be replaced by that of a “sterling standard country.”

*Clause 4 (8).*—The scheme of allotment should be modified so as to provide for preferential allotment to the extent of two shares (the suggested minimum qualification for a vote) being given to applicants for two shares and over. A specific provision should also be made excluding Government from voting power in respect of any capital left in its hands.

*Clause 8 (1) (a) (i).*—We would amend this to read :—

“engaged in the direction of agricultural, commercial, financial or industrial activities, or”

*Clause 11 (1).*—Elected Directors should be removable by the Governor-General in Council on a resolution passed by the Board by a majority consisting of not less than nine Directors. Other members of the Board should be removable by the authority which nominated or appointed them.

*Clause 13.*—Election rules should be drawn up by the Bank in the manner provided for in clause 53.

*Clause 15 (1).*—Provision will be necessary for calling local meetings to elect the Local Boards.

*Clause 15 (2).*—Bearing in mind the widespread practice of blank transfers in India we consider that members of Local Boards might be empowered to call upon any registered and resident shareholder to make a statutory declaration to the effect that he is the actual owner of the shares registered in his name.

*Clause 17 (1).*—Provision should be made to enable the Bank to act as Bankers for Indian States.

*Clause 17 (2) (c).*—We would add after the words “Local Government” the words “or such securities of an Indian State as may be specified in that behalf by the Governor-General in Council on the recommendation of the Central Board of the Reserve Bank.”

*Clause 17 (3).*—The reference to “Gold standard countries” should be changed to “Sterling standard countries.”

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*Clause 17 (7) and (8).*—It has been suggested that in present conditions these subsections are unduly restrictive as regards the maturities of Government securities in which the Bank is permitted to deal. We recommend that this point should be further examined by the Government of India. An amendment similar to that already suggested above to subclause 17 (2) (c) might also be made to subclause 8.

*Clause 17 (11).*—The words “or Indian State” might be added after the words “Local Government” to admit of the Bank acting as agent for the Indian States.

*Clause 17 (14).*—We consider that external borrowing should be expressly confined to other Central Banks, and that in that event no limitation need be placed on the amount which it is permissible to borrow externally.

*Clause 17 (16).*—We would redraft this sub-clause as follows:—

“Generally, the doing of all such matters and things as may be incidental to, or consequential upon, the provisions of this Act and not prohibited by this Act.”

*Clause 18.*—We would substitute for the words “in the interests of Indian trade or commerce, or for the purpose of enabling the Bank to perform any of its functions under this Act,” the words “for the purpose of regulating credit in the interests of Indian trade, commerce, industry and agriculture.”

A further amendment of this clause has been recommended in paragraph 18 of our Report.

*Clause 31.*—Here, and in other clauses where it is referred to, the provision for “gold securities” should be replaced by “sterling securities.”

*Clause 31 (3).*—It is for consideration whether it should not be made clear that the “Government of India rupee securities” must be marketable securities.

*Clause 31 (6).*—This sub-clause will require amendment in view of the adoption of a sterling standard.

*Clauses 32–37* will require modification in the light of our proposal for the omission of provision for a specific rupee redemption fund.

*Clauses 38–40.*—These clauses will require to be replaced by provisions on the lines indicated in paragraphs 19 and 20 of our Report.

*Clause 53.*—Amendments and additions will be required in consequence of certain of our recommendations.

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## APPENDIX II. Suggestions for Distribution of Local Areas and Allocation of Shares.

(See paragraph 7 of Report.)

| Area         | Head-<br>quarters | Extent   | Number of<br>Directors | Allocation<br>of Share<br>Capital<br>Rs. lakhs |
|--------------|-------------------|--|------------------------|--|
| (1)          | (2)               | (3)  | (4)                    | (5)  |
| 1. NORTHERN  | Delhi             | United Provinces<br>Punjab<br>North-West Frontier<br>Province<br>Baluchistan<br>Ajmer Merwara<br>Rajputana Agency<br>Punjab States<br>Kashmir<br>United Provinces States<br>Gwalior  | 2                      | 80   |
| 2. WESTERN   | Bombay            | Bombay Presidency<br>Sind<br>Central Provinces and<br>Berar<br>Western India Agency<br>Baroda<br>Hyderabad<br>Central India Agency<br>(excluding Bundel-<br>khand and Baghel-<br>khand)<br>Gujarat States Agency<br>Deccan States Agency | 2                      | 165  |
| 3. EASTERN - | Calcutta          | Bengal<br>Bihar and Orissa<br>Assam<br>Sikkim<br>Assam States<br>Bengal States<br>Eastern States Agency<br>Bundelkhand and<br>Baghelkhand  | 2                      | 165  |
| 4. SOUTHERN  | Madras            | Madras Presidency<br>Coorg<br>Mysore<br>Madras States  | 1                      | 50   |
| 5. BURMA -   | Rangoon           | Burma<br>Andamans and<br>Nicobars  | 1                      | 40   |

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## ANNEXURE.

### THE GOLD STANDARD AND RESERVE BANK OF INDIA BILL, 1928.

(As published.)

*A Bill to establish a gold standard currency for British India and constitute a Reserve Bank of India.*

Whereas it is expedient to provide for the establishment of a gold standard currency for British India; to constitute a Reserve Bank of India to control the working of that standard and regulate the issue of bank notes and the keeping of reserves with a view to securing stability in the monetary system of British India; and generally to make provisions for matters incidental thereto; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

1.—(1) This Act may be called the Gold Standard and Reserve Bank of India Act, 1928.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates, not later than the 1st day of July, 1929, as the Governor-General in Council may, by notification in the Gazette of India, appoint:

Provided that the Governor-General in Council may, by notification in the Gazette of India stating his reasons for such action, substitute for the year 1929 in this section the year 1930; and may, by like notifications, make two further successive substitutions of the years 1931 and 1932.

(4) Chapter III shall be in force for a period of twenty-five years and its operation may thereafter be extended for such further period or periods as the Governor-General in Council may, by notification in the Gazette of India, direct.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) "the Bank" means the Reserve Bank of India constituted by this Act;

(b) "the Banking Department" means and includes all departments of the Bank other than the Issue Department;

(c) "bank rate" means the rate published by the Bank under section 47;

(d) "bank note" means paper money issued by the Bank;

(e) "the Board" means the Board of Directors constituted in accordance with section 9;

(f) "general meeting" means a meeting of the registered shareholders of the Bank;

(g) "gold standard country" means any country, other than British India, from which any person is at liberty to export gold and in which any person may obtain gold on demand from the principal currency authority on payment of the equivalent thereof, as prescribed by law, in legal tender currency;

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(h) "Issue Department" means that department of the Bank which is charged by section 23 with the conduct and management of the note issue;

(i) "provincial co-operative bank" means any society which is registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in British India relating to co-operative societies and the sole business and object of which is the financing of the other societies in a province which are or are deemed to be so registered;

(j) "the Reserve" means the assets of the Issue Department as specified in section 31;

(k) "the Reserve Fund" means the Reserve referred to in section 46;

(l) "rupee coin" means silver rupees which are legal tender under the provisions of the Indian Coinage Act, 1906; and

(m) "scheduled bank" means a bank included in the First Schedule.

## CHAPTER II.

### INCORPORATION, SHARE CAPITAL, MANAGEMENT AND BUSINESS.

#### *Establishment and Incorporation of the Reserve Bank of India.*

3.—(1) A Bank to be called the Reserve Bank of India shall be constituted for the purpose of taking over the management of the currency from the Governor-General in Council and of carrying on the business of banking in accordance with the provisions of this Act.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

#### *Share Capital.*

4.—(1) The original share capital of the Bank shall be five crores of rupees divided into shares of one hundred rupees each, which shall be fully paid up.

(2) No amount in excess of twenty thousand rupees shall be issued to any one person or to any two or more persons jointly, and no person shall be allowed to acquire an interest in the share capital of the Bank, whether held in his own right, or held jointly with others, or held partly in his own right and partly jointly with others, to a nominal value in excess of twenty thousand rupees.

(3) Separate registers of shareholders shall be maintained at Bombay, Calcutta, Madras, Rangoon and Delhi, and a separate issue of shares shall be made in each of the areas served by those registers, as hereinafter defined, and shares shall not be transferable from one register to another save in accordance with conditions to be prescribed by the Governor-General in Council.

(4) A shareholder shall be qualified to be registered as such in any area in which he is ordinarily resident or has his principal place of business in India, but no person shall be registered as a shareholder in more than one register or as a holder of an interest in the share capital of a total nominal value exceeding twenty thousand rupees; and no person who is not—

(a) domiciled in India, or

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(b) a British subject ordinarily resident in India, or  
 (c) a company registered under the Indian Companies Act, 1913, or a society registered under the Co-operative Societies Act, 1912, or a scheduled bank, or a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in any of His Majesty's dominions and having a branch in British India,

shall be registered as a shareholder or be entitled to payment of any dividend on any share.

(5) The Board may, at its discretion, without giving any reason, decline to allot shares to any applicant or to register any transfer of shares.

(6) The areas served by the various registers mentioned in subsection (3) shall be as follows, namely:—

(a) by the Bombay register—the Presidency of Bombay (including Sind), and the Central Provinces;

(b) by the Calcutta register—the Presidency of Bengal and the Provinces of Bihar and Orissa and Assam;

(c) by the Madras register—the Presidency of Madras and the Province of Coorg;

(d) by the Rangoon register—the Province of Burma, and the Andaman and Nicobar Islands;

(e) by the Delhi register—the remainder of India, including the territories of Indian Princes and Rulers in India.

(7) The nominal value of the shares originally assigned to the various registers shall be as follows, namely:—

(a) to the Bombay register—one hundred and fifty lakhs of rupees;

(b) to the Calcutta register—one hundred and fifty lakhs of rupees;

(c) to the Madras register—forty lakhs of rupees;

(d) to the Rangoon register—forty lakhs of rupees;

(e) to the Delhi register—one hundred and twenty lakhs of rupees:

Provided that, in the event of the shares assigned to any register not being fully taken up at the first allotment, the Board may, with the previous sanction of the Governor-General in Council, transfer a portion of such shares from that register to another.

(8) In allotting the shares assigned to a register, the Board shall, in the first instance, allot one share to each applicant qualified under subsection (4) to be registered as a shareholder on that register; and, if the number of such applicants is greater than the total number of shares assigned to the register, shall determine by lot the applicants to whom the shares shall be allotted.

If the number of applicants is less than the number of shares assigned to the register, the Board shall allot the remaining shares to applicants who have applied for more shares than one; and if the number of extra shares so applied for exceeds the number of shares so to be allotted, the Board shall allot them among the various applicants in such manner as it may deem fair and equitable:

Provided that such allotments shall in all cases be subject to the restrictions contained in subsection (2).

If, after all applications have been met in accordance with the provisions of this subsection, any shares remain unallotted, they shall, notwithstanding anything contained in this section, be allotted to Government, and shall be sold by the Governor-General in Council, at not less than par, as soon as may be.

5.—(1) The share capital of the Bank may be increased by the Board with the previous sanction of the Governor-General in Council.



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(2) Every such increase shall be fully paid up, and the areas to which such further shares shall be allotted and the price at which they may be issued shall be fixed by the Board with the like sanction.

(3) The Board may determine the manner in which any increase of share capital shall be effected.

(4) The share capital of the Bank may be reduced by the Board, with the previous sanction of the Governor-General in Council, to such extent and in such manner as may be determined by the Bank in general meeting.

#### *Offices and Branches.*

6. The Head Office of the Bank shall be established in Bombay, and the Bank shall, as soon as may be, established branches in Calcutta, Madras, Rangoon, Delhi and London, and may establish branches or agencies in any other place in India or, with the previous sanction of the Governor-General in Council, elsewhere.

#### *Management of the Bank.*

7. The general superintendence of the affairs and business of the Bank shall be entrusted to a Board of Directors, which may exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting.

8.—(1) Save as expressly provided in this Act—

(a) no person may be a Director who is not or has not at some time been—

(i) actively engaged in agriculture, commerce, finance or industry, or

(ii) a director of any company as defined in clause (2) of section 2 of the Indian Companies Act, 1913, or of a corporation or company incorporated by or under any law for the time being in force in any place outside British India; and

(b) no person may be a Director who is—

(i) a government official, or

(ii) an officer or employee of any bank, or

(iii) a director of any bank, other than a registered society as defined in clause (c) of section 2 of the Co-operative Societies Act, 1912.

(2) The election or appointment as Director of any person who is a member of the Indian Legislature or of a local Legislature shall be void, unless within one month of the date of his election or appointment he ceases to be such member, and if any Director is elected or nominated as member of any such Legislature he shall cease to be a Director as from the date of such election or nomination, as the case may be.

9.—(1) The Board shall consist of the following Directors, namely:—

(a) a Governor and two Deputy Governors to be appointed by the Governor-General in Council after consideration of any recommendation made by the Board in that behalf;

(b) four Directors to be nominated by the Governor-General in Council;

(c) two Directors to be elected by the Associated Chambers of Commerce;

(d) two Directors to be elected by the Federation of the Indian Chambers of Commerce;

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(e) one Director, representing the interests of agriculture, to be elected by provincial co-operative banks holding shares to the nominal value of not less than five thousand rupees;

(f) eleven Directors to be elected on behalf of the shareholders on the various registers, in the manner provided in section 10 and in the following numbers, namely:—

(i) for the Bombay register—three Directors;

(ii) for the Calcutta register—three Directors;

(iii) for the Madras register—one Director;

(iv) for the Rangoon register—one Director;

(v) for the Delhi register—three Directors; and

(g) one government official to be nominated by the Governor-General in Council.

(2) The Governor and Deputy Governors shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Board subject to any minimum prescribed by the Governor-General in Council.

(3) The Governor, a Deputy Governor and a Director nominated or elected under clause (b), (c), (d), (e) or (f) shall hold office for five years, or thereafter until his successor shall have been duly appointed, nominated or elected, and, subject to the provisions of section 8, shall be eligible for re-appointment, re-nomination or re-election as the case may be.

The Director nominated under clause (g) shall hold office during the pleasure of the Governor-General in Council. He may attend any meeting of the Board and take part in its deliberations, but shall not be entitled to vote.

(4) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

10.—(1) The shareholders registered on the various registers shall elect delegates for the purpose of electing Directors to represent them on the Board, and the numbers of delegates shall be as follows, namely:—

(a) for the Bombay register—twenty-four members;

(b) for the Calcutta register—twenty-four members;

(c) for the Madras register—ten members;

(d) for the Rangoon register—ten members;

(e) for the Delhi register—twenty-four members.

(2) Every shareholder who has been registered on a register for not less than six months immediately preceding the election shall be entitled to vote at the election of delegates for the shareholders on that register; and no shareholder shall have more than one vote.

(3) The delegates for the shareholders on a register shall be elected from among those who are shown on that register as having held, for a period of not less than six months immediately preceding the election, unencumbered shares of the Bank of a nominal value of not less than five thousand rupees:

Provided that no person shall be elected as a delegate who is a government official or an officer or servant of the Bank:

Provided further that no candidate may stand for election, unless he has been nominated by not less than twenty of the shareholders entitled to vote at the election.

(4) The election of delegates for the shareholders on a register shall be held once in every five years, at a convenient time before the expiry of the term of office of the retiring Directors for the election of whose successors the delegates are to be elected.

(5) Delegates shall hold office for a period of five years:

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Provided that, if a delegate ceases to be equalified for election under subsection (3), he shall forthwith cease to hold office as a delegate.

(6) A casual vacancy in the office of delegate, in whatsoever manner arising, may be filled by the Board from among the shareholders for the time being qualified for election to that office under subsection (3).

(7) The delegates for the shareholders on a register shall elect, from among those shareholders, the Directors to represent them on the Board in accordance with this Act and the rules made under section 13.

11.—(1) The Governor-General in Council may remove from office the Governor, a Deputy Governor, or any Director nominated or elected under clause (b), (c), (d), (e) or (f) of subsection (1) of section 9, on a resolution passed by the Board in that behalf by a majority consisting of not less than fifteen Directors:

Provided that, in the case of a Director elected under clause (c), (d), (e) or (f), such resolution shall have been confirmed by a majority of not less than two-thirds of the persons present and voting at a general meeting expressly called for that purpose.

(2) A Director nominated or elected under clause (b), (c), (d), (e) or (f) of subsection (1) of section 9 shall cease to hold office if, at any time after the expiry of one month from the date of his nomination or election or of eighteen months from the date on which this Act comes into force, whichever is later, he is not registered as a holder of unencumbered shares of the Bank of a nominal value of not less than ten thousand rupees, or if he ceases to hold unencumbered shares of that value.

12.—(1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Governor-General in Council may appoint another person to officiate for him, and such person may, notwithstanding anything contained in clause (b) of subsection (1) of section 8, be an officer of the Bank.

(2) A casual vacancy in the office of a Director, other than the vacancies provided for in subsection (1), shall be filled in the manner in which, and by the authority by whom, the nomination or election of the Director vacating office was made; and the Director so nominated or elected shall hold office for the unexpired portion of the term of his predecessor.

13. The Governor-General in Council may, after previous publication, make rules to provide for all matters for which provision is in his opinion necessary or expedient for the holding and conduct of elections under this Act, and, in particular, and without prejudice to the generality of the foregoing power, may by such rules provide—

(a) for the holding of elections according to the principle of proportional representation by means of the single transferable vote or otherwise as he thinks fit in any case; and

(b) for the final decision of doubts or disputes regarding the qualifications of any candidate for election or regarding the validity of elections.

14. Meetings of the Board shall be convened by the Governor at least six times in each year and at least once in each quarter. Meetings shall ordinarily be held in Bombay, but at least two meetings of the Board shall be held in Calcutta in each year.

15.—(1) A general meeting (hereinafter in this Act referred to as the annual general meeting) shall be held annually at Bombay within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Board at any other time.

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[Continued.]

(2) Any shareholder shall be entitled to attend and vote at any general meeting, and no shareholder, whether present in person or voting through another shareholder as proxy, shall have more than one vote.

16.—(1) The following provisions shall apply to the first constitution of the Board, and, notwithstanding anything contained in section 9, the Board as constituted in accordance therewith shall be deemed to be duly constituted in accordance with this Act.

(2) The first Governor and first Deputy Governors shall be appointed by the Governor-General in Council on his own initiative, and shall receive such salaries and allowances as he may determine.

(3) The first four Directors nominated under clause (b) of subsection (1) of section 9 shall hold office for three years.

(4) The first four Directors elected under clauses (c) and (d) of that subsection shall hold office for four years.

(5) The first Director elected under clause (e) of that subsection may be elected by all provincial co-operative banks notwithstanding that shares have not been allotted, and shall hold office for four years.

(6) The first eleven Directors representing the shareholders shall be nominated by the Governor-General in Council after consultation with the Local Governments, and shall hold office for two years.

(7) The first elections of Directors under section 10 shall be held before the expiry of the term of office of the Directors nominated under subsection (6), and the Directors so elected shall hold office as follows, namely:—

(a) the Directors elected on behalf of the shareholders on the Bombay register—for four years;

(b) the Directors elected on behalf of the shareholders on the Calcutta register—for three years;

(c) the Director elected on behalf of the shareholders on the Madras register—for five years;

(d) the Director elected on behalf of the shareholders on the Rangoon register—for five years;

(e) the Directors elected on behalf of the shareholders on the Delhi register—for two years.

#### *Business of the Bank.*

17. The Bank shall be authorised to carry on and transact the several kinds of business hereinafter specified, namely:—

(1) the accepting of money on deposit without interest from, and the collection of money for, the Secretary of State in Council, the Governor-General in Council, Local Governments, banks and any other persons;

(2) (a) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and arising out of *bona fide* commercial or trade transactions, bearing two or more good signatures, one of which shall be that of a scheduled bank, and maturing within ninety days from the date of such purchase or rediscount exclusive of days of grace;

(b) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank, or a provincial co-operative bank, and drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within six months from the date of such purchase or rediscount, exclusive of days of grace: provided that the total face



15<sup>th</sup> August, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
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value of bills or notes so purchased or rediscounted shall not at any time exceed one-fourth of the total face value of all bills and notes purchased or rediscounted by the Bank up to that time;

(c) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing the signature of a scheduled bank, and issued or drawn for the purpose of holding or trading in securities of the Government of India or a Local Government, and maturing within ninety days from the date of such purchase or rediscount exclusive of days of grace;

(3) the purchase from and sale to scheduled banks and persons approved by the Board, in amounts of not less than the equivalent of one lakh of rupees, of the currencies of such gold standard countries as may be specified in this behalf by the Governor-General in Council by notification in the Gazette of India, and of bills of exchange (including treasury bills) drawn in or on any place in any such country, and maturing within ninety days from the date of such purchase, exclusive of days of grace; and the keeping of balances with banks in such countries;

(4) the making of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days against the security of—

(a) stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any Act of Parliament or by any law for the time being in force in British India;

(b) gold coin or bullion or documents of title to the same;

(c) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Bank: provided that the total of the loans and advances against such securities as are referred to in sub-clause (b) of clause (2) shall not at any time exceed one-fourth of the total loans and advances made by the Bank up to that time;

(d) such bills of exchange as are eligible for purchase by the Bank under clause (3);

(e) promissory notes of any scheduled bank or a provincial co-operative bank, supported by documents evidencing title to goods which have been transferred, assigned, hypothecated or pledged to any such bank as security for a cash credit granted for *bonâ fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops: provided that no loan or advance shall be made on the security of any promissory note such as is referred to in this sub-clause after the expiry of five years from the date on which this section comes into force;

(5) the making of advances to the Governor-General in Council repayable in each case not later than three months after the close of the financial year in respect of which the advance has been made;

(6) the issue of demand drafts and the making, issue and circulation of bank post bills made payable on its own branches;

(7) the purchase and sale of securities, maturing within five years from the date of such purchase, of the Government of any gold standard country specified in this behalf by the Governor-General in Council by notification in the Gazette of India;

(8) the purchase and sale of securities of the Government of India of any maturity, or of a Local Government or of a local authority in

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British India maturing within ten years from the date of purchase: provided that the amount of such securities held at any time in the Banking Department shall be so regulated that—

(a) the total value of such securities shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and two-fifths of the liabilities of the Banking Department in respect of deposits;

(b) the value of such securities maturing after six months shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and one-fifth of the liabilities of the Banking Department in respect of deposits;

(c) the value of such securities maturing after one year shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and one-tenth of the liabilities of the Banking Department in respect of deposits; and

(d) the value of such securities maturing after ten years shall not exceed the aggregate amount of the share capital of the Bank and the Reserve Fund;

(9) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities;

(10) the sale and realisation of all property, whether moveable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims;

(11) the acting as agent for the Secretary of State in Council, the Governor-General in Council or any Local Government in the transaction of any of the following kinds of business, namely—

(a) the purchase and sale of gold or silver;

(b) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company;

(c) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares;

(d) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere;

(e) the management of public debt;

(12) the purchase and sale of gold coin and bullion;

(13) the opening of an account with, and the acting as agent or correspondent of, any other bank which is the principal currency authority of a gold standard country under the law for the time being in force in that country or any of the Federal Reserve Banks in the United States of America;

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed:

Provided that the total amount of such borrowings shall not at any time exceed the amount of the share capital of the Bank:

Provided further, that no money shall be borrowed under this clause from any person in British India other than a scheduled bank;

(15) the making and issue of bank notes subject to the provisions of this Act; and

(16) generally, the doing of all such matters and things as may be incidental or subsidiary to the transaction of the various kinds of business hereinbefore specified.

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18. When, in the opinion of the Board, it is necessary or expedient that action should be taken under this section in the interests of Indian trade or commerce, or for the purpose of enabling the Bank to perform any of its functions under this Act, the Bank may, notwithstanding any limitation contained in sub-clauses (a) and (b) of clause (2) of section 17, purchase, sell or discount any bills of exchange or promissory notes drawn and payable in India and arising out of *bonâ fide* commercial or trade transactions, bearing two or more good signatures and maturing within ninety days from the date of such purchase or discount, exclusive of days of grace.

19. Save as otherwise provided in sections 17, 18 and 45, the Bank may not—

(1) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking, except such interest as it may in any way acquire in the course of the satisfaction of any of its claims: provided that all such interests shall be disposed of at the earliest possible moment;

(2) purchase its own shares or the shares of any other bank or of any company, or grant loans upon the security of any such shares;

(3) advance money on mortgage of, or otherwise on the security of, immoveable property or documents of title relating thereto, or become the owner of immoveable property, except so far as is necessary for its own business premises and residences for its officers and servants;

(4) make unsecured loans or advances;

(5) draw or accept bills payable otherwise than on demand;

(6) allow interest on deposits or current accounts.

### CHAPTER III.

#### CENTRAL BANKING FUNCTIONS.

*Relations of the Bank with the Secretary of State in Council, the Governor-General in Council, and Local Governments.*

20. The Bank shall undertake to accept monies for account of the Secretary of State in Council and the Governor-General in Council, and such Local Governments as may have the custody and management of their own provincial revenues, and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the public debt, on such conditions as may be agreed upon.

21.—(1) The Governor-General in Council and such Local Governments as may have the custody and management of their own provincial revenues shall undertake to entrust the Bank, on such conditions as may be agreed upon, with all their money, remittance, exchange and banking transactions in India and elsewhere and, in particular, to deposit free of interest all their cash balances with the Bank:

Provided that nothing in this subsection shall prevent the Governor-General in Council or any Local Government from carrying on money transactions at Government treasuries or sub-treasuries at places where the Bank has no branches or agencies, and the Governor-General in Council and Local Governments may hold at such treasuries and sub-treasuries such balances as they may require.

(2) The Governor-General in Council and each Local Government shall undertake to entrust the Bank, on such conditions as may be agreed upon,

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with the management of the public debt and with the issue of any new loans.

*Note Issue.*

22.—(1) The Bank shall have the sole right to issue paper money in British India, and may, for a period of one year from the date on which this Chapter comes into force, issue currency notes of the Government of India supplied to it by the Governor-General in Council, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Governor-General in Council or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

(2) On and from the aforesaid date the Governor-General in Council shall not issue any currency notes or any other kind of paper money.

23.—(1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 32.

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

24. Bank notes shall be of the denominational values of five rupees, ten rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees and ten thousand rupees, and of such other denominational values, if any, as may be directed by the Governor-General in Council.

25. The design, form and material of bank notes shall be such as may be approved by the Governor-General in Council.

26.—(1) Subject to the provisions of subsection (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Governor-General in Council.

(2) The Governor-General in Council may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

27. Any bank note re-issued from any office of the Bank shall be sterilised and disinfected before re-issue, and the Bank shall not re-issue bank notes which are torn, defaced or excessively soiled.

28. Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Governor-General in Council or the Bank the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note:

Provided that the Bank may, with the previous sanction of the Governor-General in Council, prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace.



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*Prohibition of issue of Private Bills or Notes payable to Bearer on demand.*

29. No person in British India other than the Bank or, as expressly authorised by this Act, the Governor-General in Council shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sums or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:

Provided that cheques or drafts payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

30.—(1) Any person contravening the provisions of section 29 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) No prosecution under this section shall be instituted except on complaint made by the Bank.

*Assets of the Issue Department.*

31.—(1) The Reserve shall consist of gold coin, gold bullion, gold securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined.

(2) Of the total amount of the Reserve not less than two-fifths shall consist of gold coin, gold bullion or gold securities:

Provided that the amount of gold coin and gold bullion shall not at any time be less than thirty crores of rupees in value and shall not be less than one-fifth of the total amount of the Reserve after the end of the fifth year, or than one-quarter of the total amount of the Reserve after the end of the tenth year, from the date on which this Chapter comes into force.

(3) The remainder of the Reserve shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes drawn and payable in British India as are eligible for purchase by the Bank under sub-clause (a) or sub-clause (b) of clause (2) of section 17 or under section 18:

Provided that the amount held in rupee coin shall not exceed—

(a) during the three years after the date on which this Chapter comes into force, ninety-five crores of rupees,

(b) during the next three years, seventy-five crores of rupees,

(c) during the next four years, sixty crores of rupees, and

(d) fifty crores of rupees thereafter,

or one-tenth of the total amount of the Reserve, whichever amount is greater:

Provided further that the amount held in Government of India rupee securities shall not at any time exceed one-fourth of the total amount of the Reserve or fifty crores of rupees, whichever amount is less.

(4) For the purposes of this section, gold coin and gold bullion shall be valued at 847512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and gold and rupee securities shall be valued at the market rate for the time being obtaining.

(5) Of the gold coin and gold bullion held in the Reserve not less than seventeen-twentieths shall be held in British India, and all gold coin and gold bullion forming part of the Reserve shall be held in the custody of the Bank or its agencies:

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Provided that gold belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the Reserve.

(6) For the purposes of this section, the gold securities which may be held as part of the Reserve shall be securities of any of the following kinds payable in the currency of any of such gold standard countries as may be specified in this behalf by the Governor-General in Council by notification in the Gazette of India, namely:—

(a) balances at the credit of the Issue Department with a bank which is the principal currency authority under the law for the time being in force of such country, or with any of the Federal Reserve Banks in the United States of America;

(b) bills of exchange bearing two or more good signatures and drawn on and payable at a place in any such country and having a maturity not exceeding ninety days;

(c) securities maturing within five years of the Government of any part of His Majesty's dominions which is a gold standard country or of any other gold standard country specified in this behalf by the Governor-General in Council by notification in the Gazette of India:

Provided that, for a period of two years from the date on which this Chapter comes into force,—

(i) any of such last-mentioned securities may be securities maturing after five years, and the Bank may at any time before the expiry of that period dispose of such securities notwithstanding anything contained in section 17, and

(ii) sterling securities of the Government of India may be held as part of the Reserve.

#### *Liabilities of the Issue Department.*

32.—(1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation and of an initial amount of forty crores of rupees for the purpose of providing for rupee redemption, which last-mentioned amount shall be reduced by one rupee for every five rupees delivered to the Governor-General in Council under the provisions of section 34, and shall be increased by one rupee for every five rupees received from him under section 35.

(2) For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in subsection (2) of section 23, be paid by the Issue Department to the Governor-General in Council or the Banking Department, as the case may be; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Governor-General in Council.

#### *Initial Assets and Liabilities.*

33. On the date on which this Chapter comes into force, the Issue Department shall take over from the Governor-General in Council the liability for all the currency notes of the Government of India for the time being in circulation, and the Governor-General in Council shall

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transfer to the Issue Department gold coin, gold bullion, gold securities, rupee coin and rupee securities to such aggregate amount as is equal to the total of the amount of the liability so transferred and of a sum of forty crores of rupees. The coin, bullion and securities shall be transferred in such proportion as to comply with the requirements of section 31:

Provided that the total amount of the gold coin, gold bullion and gold securities so transferred shall not be less than one-half of the whole amount transferred.

*Supply of Coin, and of different Forms of Legal Tender Currency.*

34. The Bank may deliver to the Governor-General in Council all rupee coin held by it in excess of the amount which the Issue Department is permitted to hold as part of the Reserve under section 31, against payment of four rupees in bank notes, gold or gold securities for every five rupees so delivered.

35. When the amount of rupee coin for the time being held in the Reserve does not exceed twenty-five crores of rupees or one-tenth of the total amount of the Reserve, whichever is greater, the Bank may demand delivery of rupee coin from the Governor-General in Council, on payment of four rupees in bank notes, gold or gold securities for every five rupees so delivered.

36. The Governor-General in Council shall undertake not to re-issue any rupee coin delivered under section 34 nor to put into circulation any new rupees, except through the Bank and on the Bank's demand; and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Governor-General in Council under that section.

37. The Bank shall issue rupee coin on demand in exchange for currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906, and it shall, in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or rupees or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, in the opinion of the Bank, be required for circulation; and the Governor-General in Council shall, subject to the provisions of section 35, supply such rupees or other coins to the Bank on demand. If the Governor-General in Council at any time fails to discharge this duty, the Bank shall be released from its obligation to supply such coins to the public.

*Obligation to sell Gold and Gold Exchange.*

38.—(1) The provisions of this section shall have effect from such date, not later than the 1st day of July, 1931, as the Governor-General in Council may, by notification in the Gazette of India, appoint:

Provided that the Governor-General in Council may, by notification in the Gazette of India stating his reasons for such action, substitute for the year 1931 in this section the year 1932; and may, by like notifications, make two further successive substitutions of the years 1933 and 1934.

(2) The Bank shall sell gold bullion for delivery in Bombay to any person who makes a demand in that behalf at its office at Bombay, Calcutta, Madras, Rangoon or Delhi and pays in legal tender currency the purchase price as determined under the provisions of this section:



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Provided that no person shall be entitled to demand an amount of gold bullion containing less than two hundred and fifty tolas of fine gold.

(3) The price of gold bullion for delivery in Bombay shall be twenty-one rupees, three annas and ten pies per tola of fine gold with an addition representing twice the normal cost per tola of transferring gold bullion in bulk from Bombay to such place in a gold standard country as may be specified in this behalf by the Governor-General in Council by notification in the Gazette of India, including interest on its value during transit:

Provided that no such addition shall be made when the rate at which the currency of the country in which the place so specified is situate can be purchased in Bombay for immediate delivery at that place is such that the equivalent of the price at which the principal currency authority of that country is bound by law to give gold in exchange for currency is less than twenty-one rupees, three annas and ten pies per tola of fine gold by an amount equal to or greater than the normal cost per tola of transferring gold bullion in bulk from the specified place to Bombay, including interest on its value during transit.

(4) The Governor-General in Council shall from time to time determine in accordance with the provisions of subsection (3) the price at which the Bank shall sell gold bullion for delivery in Bombay and shall notify the price so determined in the Gazette of India. Such notification shall be conclusive as between the Bank and any other person as to the price which the Bank shall be entitled to charge in respect of any sale of gold bullion.

39.—(1) The Bank shall sell, to any person who makes a demand in that behalf at its office at Bombay, Calcutta, Madras, Rangoon or Delhi and pays the purchase price in legal tender currency, at a rate equivalent to twenty-one rupees, three annas and ten pies per tola of fine gold, the currency of such gold standard country as may be notified in this behalf by the Governor-General in Council in the Gazette of India, for immediate delivery in that country:

Provided that no person shall be entitled to demand an amount of currency of less value than that of two hundred and fifty tolas of fine gold.

(2) For the purpose of determining the equivalent rate applicable to the sale of currency under this section, twenty-one rupees, three annas and ten pies shall be deemed to be equivalent to such sum in that currency as is required to purchase one tola of fine gold in that country at the rate at which the principal currency authority of that country is bound by law to give currency in exchange for gold, after deduction therefrom of an amount representing the normal cost per tola of transferring gold bullion in bulk from Bombay to that country, including interest on its value during transit.

(3) The Governor-General in Council shall from time to time determine the equivalent rate in accordance with the provisions of subsection (2), and shall notify the rate so determined in the Gazette of India.

*Obligation to buy Gold.*

40. The Bank shall buy, from any person who makes a demand in that behalf at its office in Bombay, Calcutta, Madras, Rangoon or Delhi, gold bullion for delivery in Bombay at the rate of twenty-one rupees, three annas and ten pies per tola of fine gold, if such gold is tendered in the form of bars containing not less than two hundred and fifty tolas of fine gold:

Provided that the Bank shall be entitled to require such gold bullion to be melted, assayed, and refined, by persons approved by the Bank, at the expense of the person tendering the bullion.



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15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
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*Suspension of Reserve Requirements and Tax on Note Issue.*

41.—(1) The Bank may, with the previous sanction of the Governor-General in Council, for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold in the Reserve gold coin, gold bullion or gold securities of less aggregate amount than that required by subsection (2) of section 31 and, whilst the holding is so reduced, the proviso to that subsection shall cease to be operative.

(2) In respect of any period during which the holding of gold coin, gold bullion and gold securities is reduced under subsection (1), the Bank shall pay to the Governor-General in Council a tax upon the amount by which such holding is reduced below the minimum prescribed by subsection (2) of section 31; such tax shall be payable at the bank rate for the time being in force, with an addition of one per cent. per annum when such holding exceeds thirty-two and a half per cent. of the total amount of the Reserve and of a further one and a half per cent. per annum in respect of every further decrease of two and a half per cent. or part of such decrease.

Provided that the tax shall not in any event be payable at a rate less than six per cent. per annum.

42. The Bank shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899, in respect of bank notes issued by it.

*Duration of the Privilege of Note Issue.*

43. If at any time the Bank fails to comply with any provision of this Chapter or with any other provision of this Act, the Governor-General in Council may, by notification in the Gazette of India, declare that the Bank has forfeited the right of note issue, and shall thereupon take over the liabilities of the Issue Department together with such portion of the assets of the Bank as is required to meet such liabilities, and thereafter the business of the Issue Department shall be carried on in the manner prescribed by this Act by such agency as the Governor-General in Council may determine.

*Cash Reserves to be maintained by banks.*

44.—(1) Every scheduled bank shall maintain a balance with the Reserve Bank the amount of which shall at no time be less than seven and one-half per cent. of the daily average of the demand and two and one-half per cent. of the daily average of the time liabilities of such bank in India.

(2) For the purposes of subsection (1), the daily average of the amounts of the demand and time liabilities of each scheduled bank shall be computed in respect of each period ending on the fifteenth and on the last day of each month.

(3) Every such bank shall send to the Governor-General in Council and to the Bank a monthly return signed by two responsible officers of such bank, showing—

(a) the amounts of its demand and time liabilities respectively in India,

(b) the total amount held in India in currency notes of the Government of India and bank notes,

(c) the amounts held in India in rupee coin and subsidiary coin respectively,

15<sup>th</sup> August, 1933.] REPORT OF THE COMMITTEE ON INDIAN  
RESERVE BANK LEGISLATION.

[Continued.]

(d) the amounts of advances made and of bills discounted in India respectively, and

(e) the balance held at the Bank,  
at the close of the month to which the return relates.

(4) Every such return shall be sent not later than fourteen days after the close of the month to which it relates and shall state whether the bank has during that month maintained with the Reserve Bank the minimum balance required by subsection (1).

(5) Any bank failing to comply with the provisions of subsection (3) or subsection (4) shall be liable, on application made by or on behalf of the Governor-General in Council to the principal Civil Court having jurisdiction in a place where an office of the bank is situated, to a penalty of one hundred rupees for each day during which the failure continues.

(6) When it appears from any such monthly return or from a report of the Board that any scheduled bank has failed to maintain the minimum balance required by subsection (1), the Governor-General in Council may call for such further return, or make such inspection of the books and accounts of that bank, as may be necessary to ascertain the amount of the deficiency, if any, and the period during which it has continued; and a bank so in default shall be liable, on application made by or on behalf of the Governor-General in Council to the principal Civil Court having jurisdiction in a place where an office of the bank is situated, to a penalty at a rate per annum which shall be three per cent. above the bank rate on the amount of the deficiency for each day during which the default has continued, and shall be raised to five per cent. above the bank rate after the first seven days of the deficiency.

(7) The Governor-General in Council shall, by notification in the Gazette of India, direct the inclusion in the First Schedule of any company, not already so included, which carries on the business of banking in British India and which—

(a) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913, or a corporation or company incorporated by or under any law in force in any place outside British India, and

(b) has a paid-up capital and reserves of an aggregate value of not less than three lakhs of rupees;

and shall, by a like notification, direct the exclusion from that Schedule of any scheduled bank the aggregate value of whose paid-up capital and reserves at any time becomes less than three lakhs of rupees, or which goes into liquidation or otherwise ceases to carry on banking business.

*Agreement with the Imperial Bank of India.*

45. The Bank shall enter into an agreement with the Imperial Bank of India, which shall be subject to the approval of the Governor-General in Council and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for twenty-five years and shall further contain the provisions set forth in the Second Schedule.

CHAPTER IV.

GENERAL PROVISIONS.

*Reserve Fund and Allocation of Surplus.*

46. After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds, and such other

contingencies as are usually provided for by bankers, and after payment out of the net annual profits of a cumulative dividend at the rate of five per cent. per annum on the share capital, the surplus shall be allocated as follows:—

(a) one-half to a Reserve Fund, until such Reserve Fund is equal to one-half of the share capital, and the remaining one-half to the Governor-General in Council;

(b) thereafter, until the Reserve Fund is equal to the share capital, one-tenth to the Reserve Fund, and the balance to the Governor-General in Council, and

(c) when and for so long as the Reserve Fund is not less than the share capital, a portion to an additional dividend to the shareholders calculated on the scale set forth in the Third Schedule, and the balance to the Governor-General in Council:

Provided that, so long as the Reserve Fund is less than the share capital, not less than fifty lakhs of rupees of the surplus, or the whole of the surplus if less than that amount, shall be allocated to the Reserve Fund.

#### *Bank Rate.*

47. The Bank shall make public from time to time the minimum rate at which it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under this Act.

#### *Audit.*

48.—(1) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no director or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible for re-election on quitting office.

(2) The first auditors of the Bank may be appointed by the Board before the first annual general meeting and, if so appointed, shall hold office only until that meeting. All auditors elected under this section shall severally be, and continue to act as, auditors until the first annual general meeting after their respective elections:

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Board.

49. Without prejudice to anything contained in section 48, the Governor-General in Council may at any time appoint such auditors as he thinks fit to examine and report upon the accounts of the Bank.

50.—(1) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it or at the expense of the Governor-General in Council if appointed by him, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank.

(2) The auditors shall make a report to the shareholders or to the Governor-General in Council, as the case may be, upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing



15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN  
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[Continued.]

all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read, together with the report of the Board, at the annual general meeting.

*Returns.*

51.—(1) The Bank shall prepare and transmit to the Governor-General in Council a weekly account of the Issue Department and of the Banking Department in the form set out in the Fourth Schedule or in such other form as the Governor-General in Council may, by notification in the Gazette of India, prescribe. The Governor-General in Council shall cause these accounts to be published weekly in the Gazette of India.

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor-General in Council a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors, and the Governor-General in Council shall cause such accounts to be published in the Gazette of India.

(3) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor-General in Council a statement showing the name, address and occupation of, and the number of shares held by, each shareholder of the Bank.

*Liquidation.*

52.—(1) Nothing in the Indian Companies Act, 1913, shall apply to the Bank, and the Bank shall not be placed in voluntary or compulsory liquidation save with the sanction of the Governor-General in Council and in such manner as he may direct.

(2) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor-General in Council and the shareholders in the proportion of seventy-five per cent. and twenty-five per cent. respectively.

*Regulations.*

53.—(1) The Board may, with the previous sanction of the Governor-General in Council, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:—

(a) the maintenance of the share register, the manner in which and the conditions subject to which shares may be held and transferred, and, generally, all matters relating to the rights and duties of shareholders;

(b) the manner in which general meetings shall be convened and the procedure to be followed thereat;

(c) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons;

(d) the manner in which the business of the Board shall be transacted, and the procedure to be followed at meetings thereof;



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15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
RESERVE BANK LEGISLATION.

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(e) the establishment of Local Boards and the delegation to such Boards of powers and functions;

(f) the constitution and management of staff and superannuation funds for the officers and servants of the Bank;

(g) the manner and form in which contracts binding on the Bank may be executed;

(h) the provision of an official seal of the Bank and the manner and effect of its use;

(i) the manner and form in which the balance-sheet of the Bank shall be drawn up, and in which the accounts shall be maintained;

(j) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded; and

(k) generally for the efficient conduct of the business of the Bank.

#### *Amendments and Repeal.*

54. In the Indian Coinage Act, 1906, for section 11 the following section shall be substituted, namely:—

“ 11. Gold coins, coined at His Majesty's Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received by the Reserve Bank of India at its offices and agencies in India at the bullion value of such coins calculated at the rate of 8.47512 grains troy of fine gold per rupee.”

55. The Indian Paper Currency Act, 1923, and the Currency Act, 1927, are hereby repealed.

15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN RESERVE BANK LEGISLATION. [Continued.]

## THE FIRST SCHEDULE.

[See section 2 (m).]

## SCHEDULE OF BANKS.

Ajodhia Bank, Fyzabad.  
 Allahabad Bank.  
 American Express Company Incorporated.  
 Banco Nacional Ultramarino.  
 Bangalore Bank.  
 Bank of Baroda.  
 Bank of Behar.  
 Bank of India, Bombay.  
 Bank of Morvi.  
 Bank of Mysore.  
 Bank of Taiwan.  
 Bari Doab Bank, Lahore.  
 Benares Bank.  
 Bhargava Commercial Bank.  
 Bhowanipore Banking Corporation, Calcutta.  
 Bombay Merchants' Bank, Bombay.  
 Byopar Sahayak Bank, Meerut.  
 Canara Bank.  
 Central Bank of India.  
 Chartered Bank of India, Australia and China.  
 Chota Nagpur Banking Association.  
 Coimbatore Town Bank.  
 Comptoir National d'Escompte de Paris.  
 Dawsons Bank, Pyapon.  
 Eastern Bank.  
 Equitable Eastern Banking Corporation.  
 Grindlay and Company.  
 Hongkong and Shanghai Banking Corporation.  
 Imperial Bank of India.  
 Imperial Bank of Persia.  
 Indian Bank.

Industrial Bank of Western India.  
 Jalpaiguri Banking and Trading Corporation.  
 Karachi Bank, Karachi.  
 Karnani Industrial Bank.  
 Lloyds Bank.  
 Lyallpur Bank.  
 Mercantile Bank of India.  
 Mitsui Bank.  
 Muffassil Bank, Gorakhpur.  
 Mysore Industrial Bank.  
 Namboodiri Bank, Pallippuram.  
 National Bank of India.  
 National City Bank of New York.  
 Nederlandsche Indische Handelsbank.  
 Nederlandsche Handel - Maatschappij.  
 Nedungadi Bank, Calicut.  
 Oudh Commercial Bank.  
 P. and O. Banking Corporation.  
 People's Bank of Northern India.  
 Punjab and Kashmir Bank, Rawalpindi.  
 Punjab and Sind Bank, Amritsar.  
 Punjab Co-operative Bank.  
 Punjab National Bank.  
 Shilohri Bank, Bombay.  
 Simla Banking and Industrial Company.  
 South India Bank, Tinnevely.  
 Sumitomo Bank.  
 Thomas Cook and Sons.  
 Union Bank of India.  
 U. Rai Gyaw Thoo and Co., Akyab.  
 Yokohama Specie Bank.

15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
RESERVE BANK LEGISLATION.

## THE SECOND SCHEDULE.

(See section 45.)

*Provisions to be contained in the Agreement between the Reserve Bank of India and the Imperial Bank of India.*

1. The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India and no branch of the Banking Department of the Reserve Bank of India.

2. In consideration of the performance by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the Governor-General in Council at the places referred to in clause 1 before the coming into force of the Reserve Bank of India Act, 1928, the Reserve Bank of India shall pay to the Imperial Bank of India a commission calculated on the total of the receipts and disbursements dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India. Such commission shall be one-sixteenth of one per cent. on the first 250 crores of such total and one thirty-second of one per cent. on the remainder.

3. Subject to the condition that the Imperial Bank of India shall keep open branches not less in number than those existing at the time of the coming into force of the Reserve Bank of India Act, 1928, the Reserve Bank of India shall allow the following balances to the Imperial Bank of India at the interest rates hereinafter specified, namely:—

- (a) during the first five years from that time—3 crores free of interest;
- (b) during the next five years—2 crores free of interest and, at the option of the Imperial Bank of India, an amount not exceeding 1 crore at 2 per cent. per annum;
- (c) during the next five years—1 crore free of interest and, at the option of the Imperial Bank of India, an amount not exceeding 2 crores at 2 per cent. per annum; and
- (d) during the next five years—at the option of the Imperial Bank of India, an amount not exceeding 3 crores at 2 per cent. per annum.

4. The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force.

## THE THIRD SCHEDULE.

(See section 46.)

*Scale of Additional Dividend payable to Shareholders.*

A. So long as the share capital of the Bank is five crores of rupees—

(1) if the surplus does not exceed four crores of rupees—Nil;

(2) if the surplus exceeds four crores of rupees—

(a) out of such excess up to the first one and a half crores of rupees—a fraction of one-thirtieth;

(b) out of each successive additional excess up to one and a half crores of rupees—one-half of the fraction payable out of the next previous one and a half crores of excess:

Provided that the additional dividend shall be a multiple of one-eighth of one per cent. on the share capital, the amount of the surplus allocated

15<sup>o</sup> Augusti, 1933.] REPORT OF THE COMMITTEE ON INDIAN [Continued.  
RESERVE BANK LEGISLATION.

thereto being rounded up or down to the nearest one-eighth of one per cent. on the share capital.

B. When the original share capital of the Bank has been increased or reduced, the additional dividend shall be calculated in the manner provided in clauses (1) and (2) above, but the fraction of one thirtieth mentioned in sub-clause (a) of clause (2) shall be increased or diminished in proportion to the increase or reduction of the share capital.

### THE FOURTH SCHEDULE.

(See section 51.)

#### RESERVE BANK OF INDIA.

An Account pursuant to the Gold Standard and Reserve Bank of India Act, 1928, for the week ending on the day of .

#### Issue Department.

| <i>Liabilities.</i>                             |     | <i>Assets.</i>   |     |
|---|-----|--|-----|
|   | Rs. |  | Rs. |
| Bank Notes held in the Banking Department       |     | Rupee coin ... ..  |     |
| Bank Notes in circulation ... ..                |     | Government of India rupee securities ... ..                  |     |
| Total Bank Notes issued ...                     |     | Internal Bills of Exchange and other commercial paper ... .. |     |
| Government of India Notes in circulation ... .. |     | Gold securities ... ..                                       |     |
| Rupee redemption ... ..                         |     | Gold coin or bullion—  |     |
|   |     | (a) held in India... ..                                      |     |
|   |     | (b) held outside India ... ..                                |     |

Ratio of gold and gold securities to liabilities, per cent.  
Dated the day of 19 .

#### Banking Department.

| <i>Liabilities.</i>     |     | <i>Assets.</i>                               |     |
|-------------------------|-----|--|-----|
|                         | Rs. |  | Rs. |
| Capital paid up... ..   |     | Notes... ..                                  |     |
| Reserve Fund ... ..     |     | Rupee coin ... ..                            |     |
| Deposits—               |     | Subsidiary coin ... ..                       |     |
| (a) Government ... ..   |     | Bills discounted—                            |     |
| (b) Banks ... ..        |     | (a) Internal ... ..                          |     |
| (c) Others ... ..       |     | (b) External ... ..                          |     |
| Bills payable ... ..    |     | (c) Government of India Treasury Bills... .. |     |
| Other liabilities... .. |     | Balances held abroad ... ..                  |     |
|                         |     | Loans and advances to the Government ... ..  |     |
|                         |     | Other loans and advances... ..               |     |
|                         |     | Investments ... ..                           |     |
|                         |     | Other assets ... ..                          |     |

Dated the day of 19 .



## RECORD VI

### Statement on proposals for the Constitutional Reform of Burma by the Secretary of State for India, on Tuesday, the 10th October, 1933

MY LORD CHAIRMAN,

Burma is at present a Province of British India. It is, therefore, necessary to consider its future Government under the Committee's Terms of Reference. I have already circulated a tentative sketch of a Constitution for Burma on the assumption that it ceases to be a Province of British India and becomes a separate entity.

We have, first of all, to decide whether Burma enters the Indian Federation or whether she becomes a separate unit outside the Federation. We then have to draw up a Constitution in accordance with our decision on this issue. I think, however, that when once the initial decision is made our task should not be very difficult. If Burma enters the Indian Federation her Constitution must be the same as that of any other Indian Province, and we should have to do little more than modify the allocation of seats in the Federal Legislature so as to provide for Burmese representation. If, on the other hand, Burma is to be separated, we must still follow, in its main lines, the Indian plan. The expectations that have been held out to India apply equally to Burma as part of India and Burma has been specifically given to understand that her prospect of constitutional advancement will not be prejudiced by separation. But in the case of a separated Burma we shall have to provide not only for the functions of the provincial units in India but also for the functions of the Central Government. The Constitution I have sketched in the Memorandum is therefore an adjustment of the provisions of the federal and provincial sections of the Indian White Paper modified in some, but not many, particulars to meet the special needs of a Burma separated from India. Members and Delegates will find that in the proposals which I have circulated the points of divergence between the Burman and the Indian proposals are conveniently shown by the use of italics.

As things stand, Burma is part of India and our Indian colleagues will naturally wish to have an opportunity of expressing their opinions about its future. They will have views not only upon the inclusion or non-inclusion of Burma in the Indian Federation, but also upon the question whether Burma should be included in the Indian Federation, as some Burman party leaders have demanded, upon special terms; for example, whether she should retain for her own use customs duties levied in Burma and whether she should be free to secede from the Federation at her will.

There has already been considerable discussion about the future of Burma with Indian representatives at the first Indian Round Table Conference. But a good deal has since taken place and our Indian colleagues may wish to give their views on these developments.

I think I am right in saying that the general conclusion on this subject at the first Indian Conference was that, if it was the desire of the people of Burma that their country should be separated from India, Indians would not oppose such separation.

Now the Committee will no doubt expect to hear something from me upon the subject of separation, and I shall therefore state my own views. It should not be necessarily assumed that what I put forward as my own views are the final views of His Majesty's Government. The whole question of the future government of India, which for the present includes Burma,

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10<sup>th</sup> October, 1933.] STATEMENT ON PROPOSALS FOR THE [Continued.  
CONSTITUTIONAL REFORM OF BURMA BY THE SECRETARY OF STATE FOR INDIA.

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is now in the hands of the Joint Select Committee, and it would not be appropriate at this juncture for the Government to declare a definite decision that might appear to prejudice the Committee's deliberations. Subject to that I may say quite clearly that, after the fullest and most sympathetic consideration of Burma's real interests and aspirations, I have come to the two conclusions that were reached by the Statutory Commission, namely, that Burma should henceforth be separated from India, and that the general body of Burman opinion supports separation.

The history of the separation question in Burma is not a very long one. Indeed, the development of any political movement in the modern sense in Burma is comparatively recent. But it is a question that was bound to arise as soon as self-government began to develop in India, and once the movement for separation started, it developed with considerable rapidity.

The Indian Statutory Commission found that Burman sentiment in favour of separation from India was very general. Every member of the Burman Committee which co-operated with the Commission took this line, and in February, 1929, a motion in favour of Burma's separation from India was carried without a division. The Commission reported that from their own experience they had little doubt that the verdict of the Council was the verdict of the country as a whole and that this general view did not rest on mere sentiment only but was substantiated by cogent economic considerations. Not only are the economic interests of Burma and India often divergent but many of the other matters which have preoccupied the Indian Legislature are of no interest to Burma owing to differences of racial, social and religious outlook. Burma has therefore taken little interest in the proceedings of the Central Legislature, and her representatives have been more and more reluctant to undertake the long journey to attend sessions where their presence is of little practical weight or importance. What is true already will not be less true in the future.

Nevertheless in the last two or three years the natural desire of the people of Burma for a separate political existence has become somewhat obscure. When the clear issue was put to the electorate in the autumn of 1932, a majority of members styling themselves anti-separationists was returned and they opposed separation on the basis of the Constitution offered at the end of the Burma Round Table Conference. In the introduction to the memorandum that I circulated at the beginning of August, I have described the events which have taken place since 1931 and I have summed up the evidence by saying that there is an almost unanimous opinion in Burma in favour of ultimate separation from India and against Federation on the same terms as the other Provinces of India.

In spite of the apparent obscurity of the proceedings which took place in the Burma Legislature I think that the elements of the situation are as follows: The Indian community naturally desire permanent union with India and on account of its strong economic position this Community, which numbers less than 10 per cent. of the population, has an influence in politics out of proportion to its numbers. Apart from this, there is practically no opinion in Burma in favour of incorporation in the Federation on the ordinary provincial terms. Where the anti-separationists differ from the separationists is that they think that, after a short period of incorporation in the Indian Federation on special terms, they will secure better terms for a separated Burma than they would now obtain. Both groups hope to get a more advantageous constitution than that outlined in the Prime Minister's Statement at the end of the Burma Round Table Conference. One group thinks that this can be achieved by a temporary continuance

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10<sup>o</sup> Octobris, 1933.] STATEMENT ON PROPOSALS FOR THE [Continued.  
CONSTITUTIONAL REFORM OF BURMA BY THE SECRETARY OF STATE FOR INDIA.

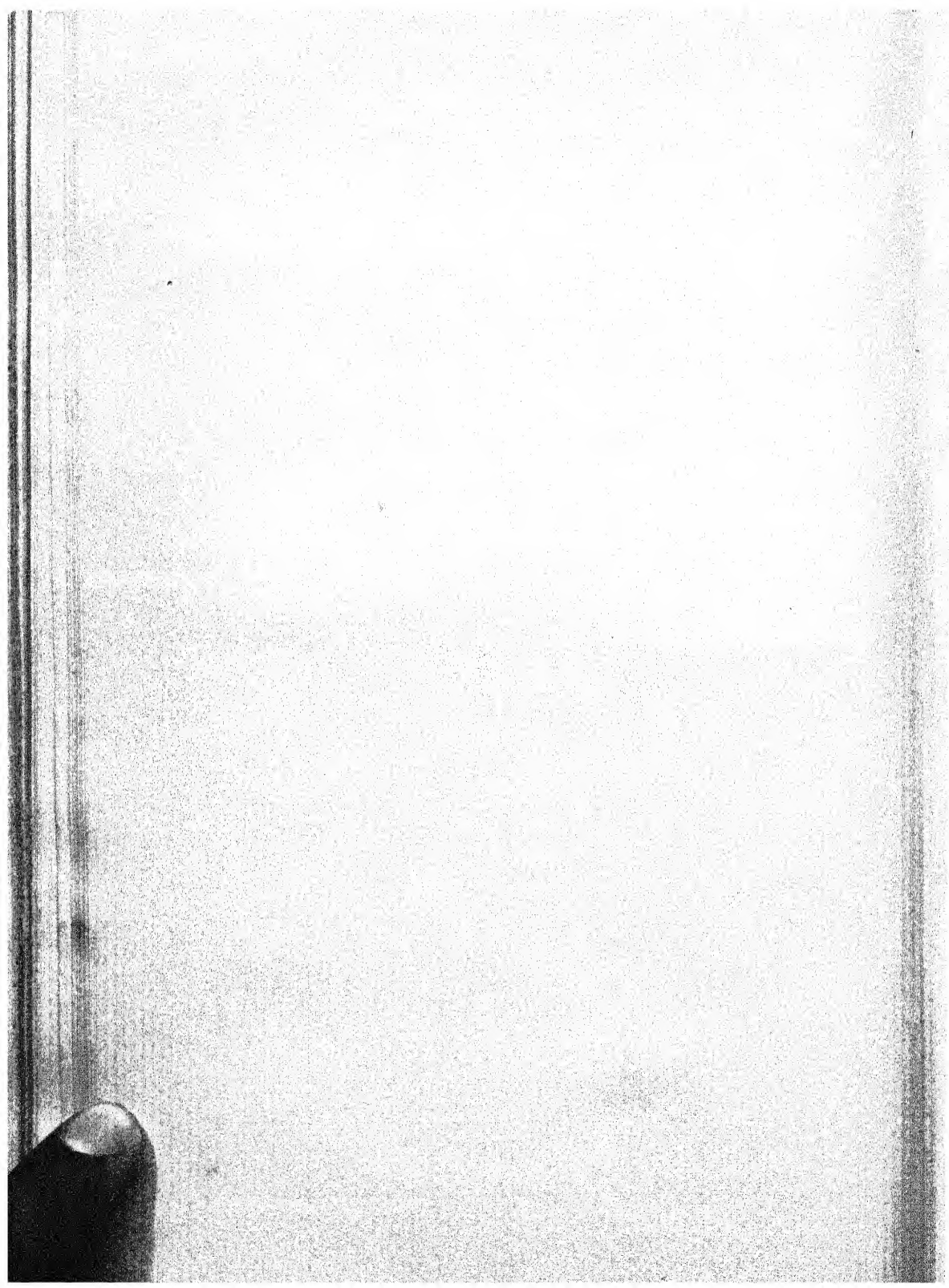
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of the association of Burma with India. The other has no such hope and realises that if Burma becomes involved in the Indian Federation she will have to stay there. Both groups are equally opposed to unconditional and permanent federation with India. Upon this at least the Resolution passed unanimously by the Burma Council in 1932 is clear. While unfavourable to the separation of Burma on the basis of the constitution offered at the end of the Burma Round Table Conference, it emphatically opposed unconditional and permanent federation with India.

It has already been stated clearly in Parliament that the right of secession from the Federation, if it could be granted at all, could not be limited to one federating party. On such a basis no federal system could be stable. Several Indian political leaders have expressed themselves in this sense and I have no doubt that the Joint Select Committee will agree with me in saying that such a right of secession cannot possibly be granted. Once this condition is made finally clear beyond any possibility of doubt, I believe that a great deal of the obscurity which has surrounded the separation issue will vanish and that the general desire of the people of Burma for separation will once more become clear.

For these reasons I think there can be no real doubt as to which the Burman people prefer of the alternatives actually open to them, and I have said enough to show why my personal opinion is on the side of separation. It will be a matter for the Committee later to say whether they agree. I am not pressing them for an immediate decision. I think that this is an opportunity for the Indian delegates to express their views, and I hope that the Committee will agree to invite a suitable number of delegates representing the various parties and interests in Burma to come to London later and join them upon the same footing as that which the Indian delegates have been occupying during the last few months.







## RECORD VII

### Note by Secretary of State for India on Family Pension Funds

1. In para. 73 of the introduction to the White Paper it was stated that His Majesty's Government considered that the balances of the Family Pension Funds must be recognised as a definite debt liability of the Government of India and as the property of subscribers; and that they were examining a proposal for the gradual conversion of these assets into separate sterling funds.

2. The Funds referred to do not include various funds, Civil and Military, which were established in the time of the East India Company under private management. The assets of these funds were taken over by Government, under powers conveyed by Acts of Parliament, and the pensions at fixed rates guaranteed as charges on the Revenues of India. The capital of these funds therefore no longer exists and the position of persons drawing pension under these rules differs in no way from that of officers in receipt of ordinary retiring pensions.

3. The Funds now under consideration are four in number:—

- (1) The Indian Military Service Family Pension Scheme.
- (2) The Indian Military Widows' and Orphans' Fund.
- (3) The Indian Civil Service Family Pension Scheme.
- (4) The Superior Services (India) Family Pension Fund.

The first two are maintained by officers of the Indian Army. Subscription to the first is compulsory on all officers commissioned between 1873 and 1915, and to the second on all officers commissioned since that date. The third fund, as its name implies, is maintained by the Indian Civil Service, subscription being compulsory on all officers entering since 1881. The fourth was established in 1923 for officers of services, other than the Indian Civil Service, recruited by the Secretary of State in Council, and membership is compulsory on all such officers now entering the services; there is in addition a large voluntary membership of officers of similar type who were appointed before the institution of the Fund.

4. The funds are in all cases self-supporting. Subscriptions are paid into the general balances of the Government of India, and pensions are met from these balances. An account is kept of receipts and payments, and interest is added to the balances at rates determined from time to time by the Secretary of State in Council. The liabilities and assets are subjected every five years to actuarial examination, and any necessary alteration in the rates of subscription and benefits are made by the Secretary of State in Council, after consideration of the Actuary's reports.

5. On the basis of the latest available information the receipts and payments during the current financial year together with the opening and closing balances at the credit of the several funds, are estimated as follows:—

|                          | I.M.S.F.P. | I.M.W.O.F. | I.C.S.F.P. | S.S. (I) F.<br>P.F. | Total.     |
|--------------------------|------------|------------|------------|---------------------|------------|
|                          | £          | £          | £          | £                   | £          |
| Balance 1st April, 1933. | 6,854,000  | 461,000    | 4,058,000  | 456,000             | 11,829,000 |
| Inte est ...             | 309,000    | 22,000     | 184,000    | 21,000              | 536,000    |
| Contributions ...        | 81,000     | 33,000     | 60,000     | 43,000              | 217,000    |
|                          | 7,244,000  | 516,000    | 4,302,000  | 520,000             | 12,582,000 |
| Payments ...             | 312,000    | 8,000      | 101,000    | 14,000              | 435,000    |
|                          | 6,932,000  | 508,000    | 4,201,000  | 506,000             | 12,147,000 |

14<sup>o</sup> Novembris, 1933.] NOTE BY SECRETARY OF STATE  
FOR INDIA ON FAMILY PENSION FUNDS.

[Continued.]

6. In May last circulars were issued to subscribers of all four funds, inviting their views on the following suggestions.

That Commissioners or Trustees should be appointed for the purpose of holding and investing on behalf of subscribers in approved securities, which would presumably be confined to those authorised by the Trustee Act, sums handed over to them; that these Commissioners should be paid annually for this purpose the contributions received during the year and the interest allowed by the Government of India on the balances remaining in its hands, and that money for the payment of pensions as they fall due should be provided by the Government of India out of the balances in its hands, which would thus be gradually reduced.

It was pointed out to the subscribers that by investment in Trustee Stocks it was improbable that the Commissioners would be able to secure a yield equal to the rate of interest allowed on the balances under the existing arrangements, which is based on the current yield of India long dated sterling securities; that allowance might have to be made, particularly in the present conditions, for capital depreciation of investments, a risk from which the funds are now exempt; and that as a result it was probable that the proposals would involve some reduction in the rates of pension now payable.

7. The effect of the above proposals would clearly be that the balance in the hands of the Government of India would gradually disappear as it was drawn upon to meet the demands of a growing pension list; while a new fund would gradually be built up from the investments made by the Commissioners. The period which would elapse before the transfer was complete, that is to say before the entire balances in the hands of Government had been paid out, would vary with the different funds. It has been estimated at from 15 to 20 years in the case of the Indian Military Service Family Pension Scheme, and at as much as 40 years in the case of the Indian Military Widows' and Orphans' Fund, with intermediate periods in the other cases.

8. A large majority of the replies received from subscribers indicate a desire for the investment of the balances in sterling securities, but the scheme outlined in the circulars has been criticised on the ground that the period elapsing before transfer will be complete is too long. It is proposed to meet this criticism by amending the proposals so as to ensure the completion of transfer within 15 years in every case. This could be effected either by handing over to the Commissioners a fixed annual sum to cover both principal and interest, calculated to exhaust the balance in 15 years, or by handing over annually one-fifteenth of the balance, with interest on the residue; contributions received during the year would of course also be handed over to the Commissioners, and pensions payable would be met from the sums in their hands.

9. The precise nature of the arrangements contemplated can best be made clear by illustrative figures based on the estimates given above for the current year.

It is not contemplated that the Commissioners should have any responsibility for the administration of the Pension schemes, or for the collection of subscriptions and disbursement of pensions. The administration would remain in the hands of the Secretary of State, who would decide after consultation with subscribers all such matters as rates of contribution or pension, changes in the Regulations, etc. The disbursement of pensions

14<sup>o</sup> Novembris, 1933.] NOTE BY SECRETARY OF STATE  
FOR INDIA ON FAMILY PENSION FUNDS.

[Continued.]

and collection of subscriptions would continue to be carried out through the ordinary paying agencies of the Government of India. The function of the Commissioners therefore would be solely that of holding and investing money handed over to them, and of supplying from the funds in their hands, when required, money for the payment of pensions.

Under the first of the alternatives mentioned above, there would be payable to the Commissioners, if the scheme were in operation during the current year, an annuity of £1,092,000. This annuity has been calculated on the basis of the present rate of interest, 4½ per cent., and would need recalculating if, at any time during the 15 years, this rate were reduced. The Commissioners would also receive the contributions, estimated at £217,000; and would have to supply funds for the payment of pensions estimated at £435,000. This sum would doubtless, in practice, be deducted from the annuity before it was handed over to them.

Under the second alternative there would be handed over to the Commissioners in the first year one-fifteenth of £11,829,000 or £789,000, interest estimated at £536,000, and contributions estimated at £217,000; while they would, as before, refund £435,000 for pensions. The amounts to be handed over in subsequent years would be smaller, as the interest payable would be less.

10. The adoption of a proposal on the above lines would of course involve no ultimate charge on Indian Revenues, which are in any case liable to pay the entire balances sooner or later in the form of pensions. It would, however, involve the immediate disbursement in sterling of sums which would otherwise remain as a liability to be met at a later date. Of the two alternatives under consideration the first would involve an extra disbursement in the current year of £874,000, the net sum which, on the figures given above, it would be necessary to hand over to the Commissioners. The second would involve an extra disbursement of £1,107,000 in the current year. On account of the smaller strain which it would place on the Remittance programme in the earlier years, the first alternative is to be preferred.

As the balances are increasing year by year the annual amounts to be handed over to the Commissioners, and the extra sterling disbursement required, will be slightly increased under either scheme with each year's delay in its inauguration.

After the close of the 15 year period, as the annual contributions will be less than the pensions payable, it would be necessary for the Commissioners to meet a large part of the latter from the funds on their hands. The revised arrangement would therefore at this stage actually be of assistance to the Government of India in meeting its sterling obligations.

11. Inasmuch as the proposals if accepted would involve a change in the conditions under which members of the funds have hitherto subscribed, and moreover a change which in some respects, for instance in regard to the rate of interest realised, would be to their disadvantage, it is necessary that the change should be made with legal sanction, and desirable that it should have the expressed assent of a majority of the subscribers. Although a large majority of the replies received are in favour of investment, the total replies amount to only about one-third of the number of circulars issued. Many subscribers, moreover, have expressed a wish to see the results of valuations now in process, or shortly to be made, before giving a decision. It is therefore desirable that the proposals in a definite and concrete form should again be laid before subscribers before any final decision is taken,



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14<sup>o</sup> Novembris, 1933.] NOTE BY SECRETARY OF STATE  
FOR INDIA ON FAMILY PENSION FUNDS.

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[Continued.]

and as this process may entail considerable delay it is not contemplated that an attempt should be made to include in the Constitution Act itself definite and final provisions. A form of permissive enactment, which will permit the subscribers to each fund to be consulted separately at suitable times, and to take independent decisions, seems preferable. It is proposed therefore:—

That His Majesty should be empowered by the Constitution Act to direct by Order in Council the appointment of Commissioners for the purpose of receiving moneys accruing to or belonging to all or any of the Family Pension Funds and of holding and investing the same for the purposes of the funds; and to make regulations for the transfer to the Commissioners, in such manner and within such a period as may be prescribed, of the moneys accruing to the funds and the balances remaining in the hands of the Government of India:

That the interest and dividends received by the Commissioners so appointed on sums invested in their hands shall be declared exempt from liability to Income Tax:

That the Order in Council may prescribe an authority to determine the rate of interest to be added on the balances remaining in the hands of the Government of India.



## RECORD VIII

### Note by the Secretary of State for India in regard to the Memoranda submitted by Mr. Douglas Dewar

Mr. Dewar, in his two memoranda, supports his general argument with a wealth of statistical information. I have not found it possible to have examined all the figures used, but it is clear that in a good many instances Mr. Dewar presents statistics in a manner which conveys a very different impression from that to be gained from a study of the Accounts and other published records. I think that the Committee would desire to have their attention drawn to the main instances which have come to my notice in which Mr. Dewar's presentation of the figure is, in my view, at variance with the official documents.

I deal with the instances seriatim. I have not made any attempt to indicate how far Mr. Dewar's inferences from figures, or comparison of figures, are likely to be invalidated by the fact that the world economic depression has severely hit the finances of India, as of every other country.

(1) *Main Memorandum, page 1984.*

Mr. Dewar says:

"That the reforms are largely responsible for the recent increases in expenditure is shown by the fact that the charges under the head of General Administration (including Audit) in India, rose from Rs.289,20,000\* in 1912-14 to Rs.15,15,50,000 in 1930-31, whereas the gross expenditure rose from Rs.125,48,85,000† to Rs.230,42,90,000. In 1908-09 the gross expenditure for the whole of India was Rs.109,24,88,675.‡

Provincial expenditure tells the same story; the gross expenditure of the U.P. Government rose from Rs.747,46,750 in 1908-09 to Rs.12,03,32,100 in 1931-32, i.e., nearly doubled, while the increase in the General Administration charges rose from Rs.20,82,000 in 1908-9 to Rs.141,13,300 in 1931-32—a sevenfold increase!"

These figures are designed to show that, while the total expenditure in the whole of India (and also in the United Provinces in particular) has approximately doubled during the periods which Mr. Dewar takes, the expenditure on general administration, instead of rising in approximately the same proportion, has been increased about fivefold in all India, and about sevenfold in the United Provinces; and that the discrepancy is due to greatly increased pay-rolls consequent upon the Montagu-Chelmsford Reforms.

The fact is, however, that in 1921 a change was made in the grouping of the accounts, and since that date the whole of the "General Charges of District Administration," which had previously been entered under other heads, was included under "General Administration."|| As the figures below show, this invalidates Mr. Dewar's contention; and indeed if correct

\* Correct figure: Rs.2,91,61,000 in 1912-13 and Rs.2,97,55,000 in 1913-14.

† Correct figure: Rs.125,63,24,000 in 1912-13 and Rs.124,34,17,000 in 1913-14.

‡ Correct figure: Rs.110,24,88,675.

|| The descriptive heading of the relevant account, in the published "Finance and Revenue Accounts of the Government of India" for 1921-22 and every subsequent year, has contained the statement:—"General Administration.—The charges recorded under this head relate . . . and also to cost of district administration which, prior to 1921-22, was divided between the heads 'Land Revenue' and 'Administration of Justice.'"

16<sup>o</sup> Novembris, 1933.] NOTE BY THE SECRETARY [Continued.  
OF STATE FOR INDIA ON MEMORANDA SUBMITTED BY MR. DOUGLAS DEWAR.

figures were used, it would appear, adopting Mr. Dewar's own criterion, that no disproportionate burden on the Indian taxpayer should be attributed to the reforms.

The All-India figure for charges on account of general administration in 1930-31, as given by Mr. Dewar, is Rs.1515.5 lakhs. Of this amount, over 60 per cent. (Rs. 922.4 lakhs) is in respect of District Administration, for which nothing is included in his figure for 1913-14.

Similarly, taking the United Provinces figures; of the General Administration figure of Rs.141.1 lakhs as given by Mr. Dewar, more than 70 per cent. (Rs.101.6 lakhs) represents charges of District Administration, in respect of which nothing is included in his figure for 1908-9.

(2) *Page 1985.—Pension charges.*

The retirement of 558 officers on proportionate pension is said to cost India over 1 crore of rupees annually.

The total actual pensions of such officers could not amount to this sum. The net *extra* pecuniary cost through their having retired on proportionate pension instead of in the ordinary course is difficult to calculate, but would, in any case, be a very small amount in comparison with the total pension.

(3) *Main Memorandum, page 1987.*

Mr. Dewar gives figures of the Forest Revenue in two provinces in 1929-30 and 1930-31. He states that the fall in revenue was "due to the increase of lawlessness," and in support of this he purports to "quote" the Bombay Government's Administration Report as stating that "the reason" of the heavy fall in Bombay was that Civil Disobedience assumed an aggressive form. In point of fact, both in that (Bombay) Report and in the Forest Department's Report of the Central Provinces the general trade depression is put first among the causes of the fall in revenue, though it is of course stated that it was accentuated by civil disobedience. (The following is the relevant extract from the Central Provinces' Report: "There was a decrease under all heads" [of Forest Revenue] "due chiefly to the general depression in trade. The civil disobedience campaign also affected the revenue from timber and other leases and grazing.")

(4) *Pages 1993-4 of the Main Memorandum.*

With reference to Mr. Dewar's statement as to what will "undoubtedly" happen in the future, namely, heavy withdrawals from the Savings Bank, and (apparently) encashment of cash certificates, it may be of interest to give the following figure covering a period during which the prospect of constitutional change has been before the Indian people:—

On the 31st March, 1925, 1926 and 1927 respectively, the aggregate outstanding amount of Post Office Cash Certificates and Post Office Savings Bank deposits in India added together, were Rs.38 crores, Rs. 48 crores and Rs.56 crores.

By March, 1928, the Statutory Commission had been appointed, and the total amount held with the Government of India by small investors under the two heads in question had increased to Rs.63 crores.

In the following two years it further rose to Rs.66 crores and Rs.72 crores.

By March, 1931, the Report of the first Round Table Conference had received publicity and the combined amount of cash certificates and Savings Bank deposits had risen to Rs.75 crores.

16<sup>th</sup> Novembris, 1933.] NOTE BY THE SECRETARY [Continued.  
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Similarly, in March, 1932 and 1933, following the publication of the Second and Third Round Table Conference Reports respectively, the combined total rose to Rs.82 crores and Rs. 97 crores.

Finally, only two months later, on the 31st May, 1933, the last date on which figures are available at the moment, when, of course, there had been ample opportunity for the contents of the White Paper to become known, the combined amount of these totals had further jumped to Rs.102 crores.

(5) *Supplementary Memorandum (No. 76)—page 1995.*

The figure for capital cost in the Provinces, given as Rs.54 lakhs, should be Rs.45 lakhs. The capital cost of the Federal Court is estimated to be about 5 or 6 lakhs. The small corresponding annual charge is covered by the large figure for "Contingencies," viz., 25 lakhs a year, included in the estimate for new "overhead charges" at the Centre (p. 21 of Record No. 3).

(6) *Supplementary Memorandum—page 1997.*

(a) At the top of the page there is an inaccurate account of the position in respect of the liability taken over by India for British War Loan in connection with her War contribution. The facts, which are well known and have been fully explained in Parliament, are that more than three-quarters of the £100 million was paid out of the proceeds of loans raised in India for the purpose. It was in respect of the balance only that a liability was assumed for a corresponding amount of British War Loan and in respect of this (until the recent suspension connected with the War Debt uncertainties) interest on the outstanding amount was paid each year and Sinking Fund payments were made from time to time in redemption of the principal amount. The latter payments have never represented more than a fraction of the sums provided in the Budget for reduction and avoidance of debt; and it is entirely misleading to suggest that these sums have been entirely absorbed for this purpose. The position is made quite clear in the published accounts and estimates.

(b) Mr. Dewar gives £13 millions as the amount of India's unproductive debt at the end of 1913-14 and £183 millions at the end of 1932-33. But these figures are not comparable.

In the earlier year he has taken the amount by which capital invested in interest-earning assets such as Railways and Irrigation works, was exceeded by the Government's *market debt* (i.e., stocks, bonds, etc., outstanding). Having assigned this meaning to "unproductive debt" when dealing with 1913-14, Mr. Dewar should, in instituting a numerical comparison, have assigned the same meaning to it in respect of 1932-33. In respect of the latter year, however, he has taken a figure representing the amount by which the interest-earning assets are exceeded by *all* interest-bearing obligations, including not merely market debt but also such items as provident fund balances, Post Office Savings Bank deposits, Depreciation and Reserve Funds, and Provincial Balances.

These "other obligations" amounted, at the end of 1932-33, to about Rs.196 crores (£147 millions). This amount must therefore be subtracted from the £183 millions, to obtain a figure for 1932-33 representing purely



16<sup>o</sup> Novembris, 1933.] NOTE BY THE SECRETARY [Continued.  
OF STATE FOR INDIA ON MEMORANDA SUBMITTED BY MR. DOUGLAS DEWAR.

market debt less interest-earning assets; so that the 1932-33 figure comparable with £13 millions in 1913-14 would be, not £183 millions, but about £36 millions.\*

(c) If "unproductive debt" is taken as meaning the excess of all interest-bearing obligations over interest-yielding assets—its present amount in the case of India is, according to Mr. Dewar's own figures, about £183 millions as compared with a total revenue of £155 millions. A comparison instituted on this basis between India and other important countries could scarcely fail to show India's administration and finances in a very favourable light.

(d) In suggesting a comparison between the rate of increase of unproductive debt in India and in England, Mr. Dewar has deducted in each case the debt directly attributable to the War. But such debt is at least as unproductive as any other; it is represented by no interest-yielding or other tangible assets; and from the tax-payers' standpoint it is no less burdensome than any other kind of debt not so represented.

(e) The argument in the last paragraph in the 1st column of page 1997 appears untenable. If the comparison is valid at all it should be based on the debt *per head*, since it is the wealth per head of the population which Mr. Dewar uses as the basis of comparison. Moreover India's post-war position should be compared with that of England after, not before, the War. There is not much real value in a comparison of this kind, but for what it is worth it may be presented without its misleading features. As pointed out above, there is no ground for treating debt due to the War as productive debt. If then, the so-called unproductive debt of India is taken (including all "other obligations" mentioned above) as £183 millions, this represents say 13s. 4d. per head of the population of British India. According to Mr. Dewar, the British national debt, which is presumably almost entirely "unproductive," amounts to about £7,648 millions or very roughly £170 per head of the population. This makes it possible to leave a very generous margin for the difference in wealth per head in the two countries and still make a comparison, for what it is worth, tell emphatically in favour of India.

(7) Last paragraph of page 1999, continued on page 2000.

The figures quoted are apparently intended to be based on the Memorandum contained in Record No. 1, but it is not clear how they are arrived at. The 19 crores referred to apparently includes 8 crores transfer of Income Tax to the Provinces which is an estimate of the *maximum permissive* transfer under the White Paper proposals, which would in any case have effect only after a period of years. It also apparently includes one crore in respect of the remission of States' tributes, etc., which would only have effect after a period of years.

\* Alternatively, if £183 millions is to be taken as the present "unproductive debt," it should be contrasted with a comparable figure for 1913-14. Materials are not readily available for computing this, but it would obviously be much larger than the figure given by Mr. Dewar which takes into account market debt only.



16<sup>th</sup> Novembris, 1933.] NOTE BY THE SECRETARY [Continued.  
OF STATE FOR INDIA ON MEMORANDA SUBMITTED BY MR. DOUGLAS DEWAR.

(8) Page 2000.—*Railways.*

This paragraph appears to present figures in a misleading way.

Immediately after a reference to "gross traffic receipts" Mr. Dewar goes on to say that "the present interest charges are only Rs.6 crores less than the traffic receipts in the best year, viz., 1927-28." The implication is that he is still referring to *gross* traffic receipts, but in fact "the traffic receipts in the best year," which are said to exceed the present interest charges by only Rs.6 crores, are *net* traffic receipts, i.e., after deducting all working expenses and making full provision for depreciation.

Mr. Dewar then stated that the total loss as the result of the last three years' working is "Rs.23½ crores, despite the fact that the expenditure on replacements has been Rs.9 crores below the normal figure." This clearly implies that the aggregate loss of 23½ crores is arrived at *after* taking into account the saving secured by abnormally low expenditure on renewals. This, however, is not the fact. The figure of 23½ crores is arrived at after making full allowance in each year for depreciation, and indeed the amount debited during this period for depreciation reserve exceeded the actual expenditure on renewals by Rs.17 crores. Thus, if only actual expenditure on renewals were taken into account, the aggregate loss during the three years of intense depression would be reduced to about Rs.6½ crores, instead of the figure of 23½ crores given by Mr. Dewar.

Mr. Dewar asserts that for the recent deterioration in the financial results of the Railways the present economic slump is "only in part" responsible. The statistical basis which he adduces for this assertion has been shown above to be somewhat misleading. Actually there is no doubt that the economic depression has been mainly responsible for the deterioration, just as it has gravely affected the finances of Railway and other concerns throughout the world. To exemplify this fact one may survey the financial results of the Indian Railways over a somewhat longer period. During the eight years from April, 1924, when the scheme for partial separation of Railways from general finances was inaugurated, to March, 1932, the surplus net revenue of the Railways, after not only paying working expenses, but also deducting interest charges, and making full allowance for depreciation, amounted (notwithstanding the indifferent results of 1931-32, when the effects of the world slump were already severely felt) to Rs.38 crores, or say £28½ millions. Thus during that period the Railways not only were in the aggregate self-supporting but contributed a surplus to general revenues averaging over £3½ millions per annum.



## RECORD IX

### Memorandum by Sir Phiroze C. Sethna, O.B.E., on the future constitution of Aden, followed by a Memorandum by the Secretary of State for India

As the British India Delegation complete their discussions with the Joint Select Parliamentary Committee to-day and there is no time left it has been suggested that I might submit a memorandum for the consideration of the Joint Select Parliamentary Committee in regard to Aden. The last paragraph of Proposal 5 on page 38 of the White Paper reads as follows:—

“The Settlement of Aden is at present a Chief Commissioner’s Province. The future arrangements for the Settlement are, however, under consideration, and accordingly no proposals in respect of it are included in this document.”

In the Council of State the Leader of the House, Khan Bahadur Mian Sir Fazl-i-Husain, on 31st August, 1933, moved “That the Government of India communiqué, dated 20th June, 1933, regarding the future administration of Aden be taken into consideration.” This gave an opportunity to discuss the Press communiqué when I moved my substitution motion which was as follows:—

“This Council after duly considering the Government of India Press Communiqué of 20th June, 1933, submits that whilst no longer objecting to the transfer to Imperial control of the Political and military administration of Aden as it exists at present, it is definitely of opinion that its Civil Administration should be continued with the Government of India or if thought necessary should be retransferred to the Government of Bombay, but that such Civil Administration not be transferred to the Colonial Office.”

As the speech I made in support of my motion explains our view point I cannot do better than reproduce it in full. I said:—

“Mr. President, the Honourable the Leader of the House has told us the object of the motion which he has placed before this Council this morning. He said that it is in accordance with the obligation Government entered into, namely, that the question of the transfer of Aden from the Government of India to the Colonial Office would only be undertaken after the Indian Legislature were given an opportunity of discussing it. For this favour we are very grateful to Government although I may be permitted to point out that on a previous occasion, in spite of similar assurances, Government did not carry out such an arrangement and to which I will refer a little later.

“The Honourable the Leader of the House has referred to the Resolution that I moved in this Council on the 26th September, 1921. It reads as follows:—

“‘This Council recommends to the Governor General in Council that a representation be made to the Secretary of State for India that the administration of Aden be continued under the Government of India and not be transferred to the Colonial Office.’

“As the Honourable Sir Fazl-i-Husain has told us, on that occasion Government very kindly, and very rightly, requested Government Members not to take part in the discussion or in the voting. We are extremely indebted to the Honourable Sir Fazl-i-Husain for assuring us that the same procedure will be followed in the course of the discussion this morning. The Honourable Sir Fazl-i-Husain added that the then Leader, the late Sir

20<sup>th</sup> Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
C. SETHNA, O.B.E., ON THE FUTURE CONSTITUTION OF ADEN.

Muhammad Shafi, at the end of the debate surveyed the whole situation and stated that Government were going to observe perfect neutrality in the matter. Sir Muhammad Shafi's words will bear repetition, and therefore, with your permission, propose to quote them. He said:—

“ I can assure the House that the Government of India will take note of the opinions expressed in this House by various Members representing different interests. They will note the fact that Indian sentiment according to the various speakers is entirely opposed to this transfer. They will also take note of the fact, which has been positively stated by the Honourable Mr. Sethna and is endorsed by the Bombay Government that local opinion in Aden as well as in Bombay is also opposed to the transfer. They will further take note of the fact stated by the Honourable Rai Bahadur Lala Ram Saran Das, that in view of the position which Indians at present occupy in different parts of Africa—parts that are under the control of the Colonial Office—Indians would prefer that Aden—their brethren, their countrymen, residing in Aden—should remain under the control of the Government of India rather than that Aden should be transferred to the control of the Colonial Office. All these sentiments which have been expressed in the various speeches delivered by Honourable Members to-day will, the House may rest assured, be carefully borne in mind by the Government of India. The Government of India have not yet pronounced in favour of this transfer and until they do, no Honourable Member has any right to assume that they are in favour of that proposition. Their position is, as announced by the Honourable the Foreign Secretary, one of benevolent neutrality towards the Resolution moved by the Honourable Mr. Sethna. They prefer to leave this Resolution to the vote of the House. The official Members will take no part in the voting and Government will undoubtedly pay due regard to the final verdict of this House upon the Resolution moved by my Honourable friend.”

“ Mr. President, if this was the view that the Council held in September, 1921, I think I am perfectly justified in stating that the Council holds not only the same view to-day but holds it in a greatly intensified form. (Hear-hear.) Sir, even after 1921, there were occasional reports that Aden was going to be transferred, and in order to make sure on the point, questions were asked both in this House and in another place to which very definite replies were given by Government which I will quote. On 16th January, 1922, the then Law Member, Sir Tej Bahadur Sapru, in the Legislative Assembly said:—

“ ‘ Government have no intention of arriving at any decision without giving the Assembly an opportunity of discussion.’ ”

“ Two years later, on 9th June, 1924, in answer to a question in this House Sir John Thompson, the Foreign Secretary, observed as follows:—

“ ‘ The matter of the transfer was under the consideration of His Majesty's Government and it was not possible to say when a decision would be arrived at but that before a final decision was arrived at, the Indian Legislature would be given an opportunity to express its opinion.’ ”

“ Such an opportunity, however, was not given to us, and this is where Government committed a breach of faith with the Legislature. On 3rd March, 1927, the then Commander-in-Chief, speaking on the Budget debate,



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made an announcement which simply staggered the Assembly. It came as a bolt from the blue. His Excellency said that the military and political administration of Aden had been definitely transferred to the Home Government, and this, as I say, without any previous reference to the Legislature. Sir, this was not enough. The announcement went on to add as follows:—

“ ‘As Honourable Members are aware, the Settlement of Aden itself is peopled to a very great extent by our fellow Indian subjects. The Government of India have thought it right that their welfare and interests should not go outside the ken of the Government of India. It will accordingly be retained; that part of the Settlement and the municipality of Aden will remain under the Government of India.’

“ ‘I would ask the House to note very carefully that what I am proposing in my motion to-day is in substance what the Commander-in-Chief announced as I have just stated.

“ ‘The Commander-in-Chief’s announcements surprised the Assembly and it is no wonder that in both the Houses there was very severe criticism of the attitude of Government in regard to this matter. Not only was the Indian Legislature kept in the dark, but even the Provincial Government immediately concerned, namely, that of Bombay, was entirely in the dark, and that in spite of the fact that the Government of India knew the views of the Government of Bombay on the question. In this House we have official representatives of the different Provincial Governments. We are not often favoured with an opportunity of hearing their voices, and it is only on very rare occasions, and when such Provincial Governments think that it is absolutely necessary in the interests of such Provincial Governments that their view should be placed before the House, that their representatives do get up and talk. Such was an occasion when I moved my Resolution in September, 1921. The then representative of the Bombay Government, the Honourable Mr. Pratt, a Member of the Indian Civil Service, used words which showed the feeling which the Government of Bombay entertained on the question of the transfer of Aden. He said:—

“ ‘The transfer of Aden to the Colonial Office is a question in which the Government of Bombay is deeply and closely interested. Towards that question the attitude of the Bombay Government cannot in any circumstances be one of neutrality and I have been authorised to give expression to the provisional views of the Bombay Government at this stage of the discussion of this question. Their position is that they have had very little notice and indeed very little time for the consideration of this question. They have had very little information of the grounds upon which the transfer has been considered. It is also a fact that public opinion both in Bombay and Aden has expressed itself very strongly against the proposed transfer. Very strong protests have been recorded by the trading communities of Bombay and Aden, and for that reason for the present the Bombay Government objects to any change in the *status quo*.’

“ ‘Now, Sir, the Bombay Government have not changed their views, as is evident from what followed in the Bombay Council exactly a week after the announcement made by His Excellency the Commander-in-Chief in the Assembly. That announcement, as I have already said, was made on 3rd March, 1927. On 10th March, 1927, the Home Member of the Bombay Government, Sir Ernest Hotson, introduced a Bill called the Aden Civil and Criminal Justice Bill in the Bombay Council and in regard to the

20° Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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statement made by the Commander-in-Chief, Sir Ernest said that the announcement came as a surprise to the Government of Bombay as much as to the general public.

“ ‘I am obliged to stress this point,’ said Sir Ernest, ‘because during the discussion on the Bill both I and my Honourable Friend the Chief Secretary assured several Honourable Members that we had no reason to suppose that a transfer was imminent, and indeed pointed to the fact that the Government of India had instructed us to proceed with the Bill as evidence that no immediate change was proposed. The details of the future system of administration at Aden are not yet known to the Government of Bombay, which indeed knows nothing further than what has appeared in the Press.’

“ This Sir, proves my statement that even the Provincial Government most directly concerned with the transfer was kept entirely in the dark.

“ This was, as I have said in 1927. In January, 1929, when there were fresh rumours of the transfer, questions were again asked and Sir Denys Bray gave a reply which consisted of two sentences which are very pertinent and to which I would respectfully request the earnest attention of Members of this Honourable Council. The first sentence was:—

“ ‘I repeat my promises that the transfer of Aden from India will not be effected without this House being taken into consultation.’

“ Mark the words ‘my promises,’ which I may add were not fulfilled. The next sentence is still more pertinent. He said:—

“ ‘I hasten to add that all idea of such a transfer has long since been abandoned.’

“ Two years later, when the Aden administration was proposed to be transferred from the Government of Bombay to the Government of India there were also rumours of a subsequent transfer from the Government of India to the Colonial Office. Thereupon those interested in the Aden trade thought it necessary to wait in a deputation on His Excellency the Viceroy. The deputation was a very influential and representative one. It waited on His Excellency Lord Willingdon in November, 1931. The deputation pointed out to the Viceroy that it was feared that in all probability the transfer from the Government of Bombay to the Government of India was the thin end of the wedge and that it was but the first step to its subsequent transfer to the Colonial Office. Now, Sir, mark the reply which on behalf of the Viceroy the then Foreign Secretary, now Sir Evelyn Howell, gave to the deputation. He said, as regards the apprehension that the proposed transfer was only a step towards the transfer of control to the Colonial Office, that the present proposals were made solely with a view to improving the conditions and making an end of administrative inconvenience at Aden.

“ ‘The proposals were complete in themselves and were made on their own merits without afterthought or ulterior motives of any kind. They were not a step towards any other change.’

“ The deputation at first thought that His Excellency would not take part in the discussion, but His Excellency, in order to allay the fears of the deputation, himself thought fit to add a few words. He emphatically endorsed the Foreign Secretary’s statement regarding the transfer to the Colonial Office that no such suggestion had been considered and undertook that, should it arise in future, all interests concerned would be consulted.

20<sup>o</sup> Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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The transfer now proposed would make no difference to the commercial relations of Aden with Bombay and, in his opinion, as at present advised, it seemed the wiser course all round.

"After an interval of another two years or less the White Paper was published in March last. The only reference to Aden in the White Paper is in four lines, which read as follows:—

"The Settlement of Aden is at present a Chief Commissioner's province. The future arrangements for the Settlement are however under consideration, and accordingly no proposals in respect of it are included in this document."

"Soon thereafter several British-Indian delegates were sent to London to confer with the members of the Joint Select Committee of Parliament, of whom I was one. After we reached London we learned that there was every chance now of the transfer to the Colonial Office being completed. Some of us delegates therefore thought it advisable to request an interview with the Right Honourable the Secretary of State. He agreed to receive our deputation which was led by His Highness the Aga Khan. We laid our case before him and from what we gathered we understood that he was in sympathy with the view we expressed. But at the same time he pointed out that because there was to be federation in India hereafter, which would consist only of Provinces and of Indian States, and because Aden was not a Province the question was very difficult. At the same time he hoped that the difficulty might not be insurmountable. How he hoped to surmount the difficulty he did not say, but if I might venture an opinion I think that if Aden continued as before to remain under the Province of Bombay perhaps the difficulty could be removed. It is for that reason, Sir, that in my substituted motion I have said that if thought necessary the civil administration of Aden might be re-transferred to the Bombay Government.

"Now, Sir, I turn to the Press communiqué to which the Honourable Leader of the House drew our pointed attention, and particularly to those points in it which he thought we ought not to ignore in the course of our discussion. In the first place, I will deal with the three points in the communiqué as to why Aden should not remain linked with India. Point No. 1 says that Aden is geographically remote from India. If it is 1,600 miles away from India, the distance between Aden and the Colonial Office is two-and-a-half times that. I will leave it to the House to consider if this argument is sound. The next point is that it would not naturally fit into the new federation. I have already answered this contention by saying that even in the opinion of no less a personage than the Right Honourable the Secretary of State that difficulty is not insurmountable. I now come to the third point, and that is that it is already to some extent under Imperial control. The answer to that is that if it has passed out of our control, it was not with our agreement, it was so done over our heads and in spite of our protests. We are however now quite prepared to concede that for political and military considerations Aden may remain under the Imperial control.

"Then there are six points enumerated in the communiqué according to which Government try to make out that India would not be a loser by the transfer. I will deal with them *seriatim*.

"Point No. 1, on which my Honourable Friend, the Leader of the House, has laid particular stress is that India will be saved a burden of Rs. 20 lakhs a year. I dispute the figure of Rs. 20 lakhs and I shall endeavour to prove

20<sup>o</sup> Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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that the figure is not correct. In no case are we expected to pay more than a maximum of £150,000, or, say, Rs. 20 lakhs according to the arrangements made in 1927 and in accordance with the reply given this morning by Government to a question asked by the Honourable Mr. Mehrotra the amount at present is about £119,000 or Rs. 16 lakhs. Now, against this Rs. 20 lakhs Government must set off what the Government of India will lose in the shape of the revenue which it derives from salt and also from income and super-tax. I make out roughly that Government will lose Rs. 10 lakhs under the heads I have quoted. Let me give you the details under the heading Salt. With regard to salt, the Government of India get a royalty of eight annas for every ton of salt exported. According to the latest figures, the export of salt in a period of 12 months amounted to over 280,000 tons and consequently Government will lose Rs. 1,40,000. Government also get ground rent for land where the salt is made which is another loss of Rs. 25,000, or in all Rs. 1,65,000. Again, so far as I can make out, the four salt factories in Aden pay between them income tax and super-tax to the extent of Rs. 3½ lakhs or more, so that the total of these two items alone exceeds Rs. 5½ lakhs. I explained that the Government of India will lose Rs. 10 lakhs, and I pointed out how the loss is Rs. 5½ lakhs or more under salt alone. The difference between Rs. 10 lakhs and Rs. 5½ lakhs is made up by the amount of income tax and super-tax under heads other than Salt. My estimate is on the conservative side and perhaps Government may lose more. I am glad that the Honourable the Leader of the House has said that if there are mistakes or misapprehensions in any statements we make he will correct them in the course of his reply and I do hope that he will be good enough to answer the point that I have made.

"THE HONOURABLE THE PRESIDENT: I request the Honourable Member to be as brief as possible; he has already exceeded 20 minutes.

"THE HONOURABLE SIR PHIROZE SETHNA: I shall be very grateful if you will give us some latitude. Government require our views and I am endeavouring to give them. I am very grateful to you, Sir, for the latitude you have already extended to me and I shall be still more grateful if you will give me more time.

"THE HONOURABLE THE PRESIDENT: I am only asking the Honourable Member to be as brief as possible.

"THE HONOURABLE SIR PHIROZE SETHNA: I shall be as brief as possible and avoid anything irrelevant.

"To come back to the Press communiqué, Item No. 2 says that the right of appeal in judicial cases to the Bombay High Court would be maintained. If they do not allow appeals to be sent to the Bombay High Court, what would happen? They will have to be sent much further away to London instead of to Bombay; or to establish an Appeal Court in Aden which will be a costly process. It is therefore by no means a favour to the Bombay Government or to the Government of India if appeals will be sent to Bombay.

"Item No. 3 says that Aden would be made a free port unless some radical change in our present economic situation should take place. All these points have 'ifs' and 'ands' attached to them for they say 'if' there is a change in the economic situation it will not be a free port.

"Likewise No. 4 says that the present style of administration would be maintained and they would not impose any additional taxation unless—mark you there is 'unless' here again—unless such a course becomes in their opinion absolutely necessary.



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" I now come to item No. 5. The communiqué says that a proportion of Indian service administrative personnel would be retained in the Aden service—and please note—' a proportion ' will be retained and the rest will be sent away, and even the proportion that is retained will be retained ' for some years,' which means that at the earliest opportunity they will be asked to go away. And what is more important, in the future under the Colonial administration no more Indians will be taken, which will also be some little loss to this country in the matter.

" Then there is the last item, which is perhaps the most important of all. It is said no racial legislation or segregation would be permitted by His Majesty's Government. Now, Sir, we have very grave doubts if in spite of this assurance that Government will be able to maintain this promise for long. I will tell you why? His Majesty's Government must carry out a uniform Colonial policy. If they favour and discriminate in favour of Asiatics in Aden, there is bound to be a clamour on the part of Europeans in the other Colonies to which Government will have to yield as they have yielded in the past and they are yielding every day. Therefore these assurances are all paper assurances. They will last only for months or years and the position of Indians in Aden will become the same as the position of Indians in Kenya or other Colonies. And that, Sir, is our most serious objection to the transfer. Experience tells us that we have suffered elsewhere and we are bound to suffer here as well, in spite of all promises and pledges to the contrary.

" Now, Mr. President, I will in accordance with your wishes be brief, although I have much more material to add. I will enumerate the objections which we entertain against the proposed transfer. They are many, but I will content myself at present with only five.

" First. It has been said that we are fighting and agitating against this proposed transfer merely on the ground of sentiment. If we do so, are we not justified? Indians have been in Aden even before the British went there. The British acquired Aden 94 years ago in 1839. Indians were there before that time and because of the encouragement given by British officers more Indians followed the British flag and particularly because they had assurances that Aden would ever remain a part of the Indian Empire. If they at any time had any doubts on the subject, because of Indian experience in other Colonies they would never have sunk their lakhs as they have done in buildings, shipping wharves, salt factories and in other concerns. They control in a great measure the trade of the Settlement. It will be no exaggeration to say that the barren rock of Aden with her population of 3,000 inhabitants has been converted into a prosperous port with a population of more than half a lakh by Indian men and money, by Indian resources and enterprise. It is therefore the duty of the Government to give us a patient hearing and to do us justice. We do not want to go under Colonial administration because we know that in that event Indians will have to leave the Settlement for reasons that I will deal with in our second objection to which I now turn.

" Near Aden, as the Honourable House knows, is Somaliland. Somaliland was at one time administered by the Bombay Government. So long as it was administered by the Bombay Government, its three ports, Berbera, Bulhar and Zaila, were prosperous. They were going on from strength to strength. After the Somaliland War the Home Government thought it right to transfer Somaliland to the Colonial Office. With what result, Mr.

20<sup>th</sup> November, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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President? These three ports are now practically dead. The population of Berbera has fallen from about 20,000 to 4,000 or less and likewise the others. And why, may I ask? Simply because the Indian traders left these ports and the Arab and Jewish traders followed in their wake. They did so for the same reason, namely, that they did not want to be under Colonial administration. Colonial administration is distinctly costly. Because it is costly taxes have to be raised. The Somaliland ports were almost free ports but soon duties were imposed and increased to meet the higher cost of administration and the result was Indian, Arab and Jewish traders left and the trade of these ports has completely dwindled down. The same must perforce happen in Aden if Aden is transferred to the Colonial Office and I may not be alive, but our successors in this House will have occasion to say that I was a true prophet.

"In support of our third objection that Colonial administration is more costly let me give just one illustration. When Aden was under Bombay, a representation was made to the Bombay Government that two Indian educational inspectors be replaced by two Europeans with salaries almost if not actually double. Because education is a portfolio held by a Minister in Bombay, he stoutly opposed this, with the result that so long as Bombay was in charge of Aden, Aden did not get the two European educational inspectors. After Aden was transferred to the Government of India, the request was repeated and granted and two European inspectors have been sent. The same thing will happen in all other departments and in proof of that I may again refer the House to a press communiqué which says that only 'a proportion' of the Indians now there will be kept and that too only for a period of years. Now, Sir, talking of the extra cost of Colonial administration, I may say in passing what is thought of it in other parts of the Empire, I mean in other Colonies. I returned from Europe this day last week. On board the P. and O. steamer I came by were some fellow passengers who were civil servants from the Straits Settlements and the Malay States. We were comparing notes with regard to the different civil services. They volunteered the information that their cadre is far larger than should be the case as compared with the cadre of the Civil Service in this country. But at the same time they said they had very little work to do. I naturally inquired, why don't you ask for reduction in the number of posts and more pay? They said such a proposal had been made, but the Colonial Office did not want to increase their pay, what they wanted was more posts. One of them said ordinarily they have four civil servants there to do the work that is done by one civil servant in this country. Therefore if Aden goes to the Colonial Office the number of appointments is bound to be increased and the cost will be so much more that Indian taxpayers who are the largest taxpayers there will have to pay a great deal more.

"Our fourth objection is that the trade of India to-day runs to some crores of rupees—seven or eight crores or more. This is to some extent due to shipping facilities that exist, by which I mean that because there are salt factories in Aden from which salt has to be imported into India and rather than that those ships go empty to Aden to bring this salt, there is shipped from this country by these boats a large amount of Indian produce and that helps to reduce the rate of freight. What goes there is rice, wheat, grains, tea, gunnies, piece-goods, etc.—not from Bombay and Karachi alone but from Malabar, Calcutta, and even Chittagong, Akyab and Rangoon. And why? Because Aden is a distributing port and this produce

20° Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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is sent from there to Arabian, African and even Iraq provinces. My point therefore is that if Indians leave Aden as they are bound to, this large trade will be lost to India. You may naturally inquire, why should not any other traders take their place? I say they will not. Indians conduct their business on different lines. Those who come in their place will not do the business on a credit basis same as the Indians do.

"Our fifth objection is that, if Aden is not included in India and is transferred to the Colonial Office, then, because Aden salt pays only excise duty and not protective duty when it comes to India, the salt industry in Aden is bound to be crushed out of existence. These factories will be closed down and the lakhs sunk in them be lost, but what is of great importance, and which I would ask Government to bear in mind, is that out of Aden's population of over 50,000, there are 2,500 Arabs who work in the four salt factories there and this large number will be without employment. Sir, I can easily multiply these reasons for objecting to the proposed transfer, but I will not take up any more time of the Council.

"I will now just briefly refer to one objection in connection with my original Resolution of 1921 raised by Sir Denys Bray. He expressed the fear at that date that the Arabs and Jews were siding with the Indians but how long would the Arabs do so? He thought that as soon as the Arabs are educated, they would not join forces with the Indians. The long period of 12 years has elapsed since then. The Arabs have not wavered in their affection and in their regard and sympathy with Indians and for good reasons they as well as the Jews prefer to act in concert with them. They know that the presence of Indians help them and therefore there is no talk and no fear of their not helping the Indians. I know when I was in London some months ago much capital was made of a small petition signed by 32 people and sent to the Viceroy through the Chief Commissioner of Aden. That was a petition signed not by pure Adenites but by 32 Arabs who came from the hinterland. As soon as it was discovered that such a representation had been sent, the regular Arab traders got together and within a few days sent another representation signed not by 32 Arabs but by 500 Arabs disclaiming what was said by the 32.

"And what about our Jewish friends? The Jews in Aden are not Jews from the Levant as they are in South Africa, and where they are favoured and treated as Europeans. The Jews in Aden are Baghdadi Jews, and as much Asiatics as the Indians or the Arabs there. Both the Arabs and the Jews know just as well as we do of the Colonial policy to which I have referred. They know the Colonial policy of European powers. It is not the British alone, for the policy of Italians in Mussowah and Italian Somaliland or of the Dutch in Java and Africa. In Java is just the same discrimination in favour of the white man against the Asiatic. We full well realise that no matter what professions or promises are made to-day they are bound to be broken. The Home Government must create some excuse or other to meet the wishes of Europeans in other parts of the Empire to see that no favour is extended to Asiatics in Aden which is not extended to them in other Colonies.

"I said, Sir, in the earlier part of my speech that the political and military administration is already taken away from the Government of India. We recognise that the British Empire is great and that it must have military outposts both near and far. Aden may well be regarded as the Gibraltar of the East so far as the British Empire is concerned. We certainly have a grievance that the transfer of the political and military



20<sup>th</sup> Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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administration was made without our consent and without our knowledge, but India is a member of the great British Empire and for that reason we no longer press for the return to this country of what is already transferred in the way of the political and military administration. So far as the civil administration is concerned we protest and protest most stoutly for the reasons I have endeavoured to place before the Council.

"I do hope, Sir, that Government will accede to our wishes and keep the civil administration with the Government of India or if necessary with the Government of Bombay. It is one thing for Government to ask for our opinion and quite another if Government do not give heed to that opinion. We do hope that the Leader of the House will give us an assurance that if the view held by the Legislature is against the transfer that Government will consider itself bound to respect the wishes of the Legislature and their wishes are what is practically desired by the country at large."

Several members followed and I quote a pertinent extract from the speech of the Honourable Mr. B. K. Basu. It is as follows:—

"Sir, the real excuse that I have for intervening in this debate is that I am suffering from some intellectual tortures ever since I read this communiqué. First, as was very ably traversed by Sir Phiroze Sethna, I find the words 'geographically remote' giving me one of those tortures because when I find that we have places under the administration of the Government of India which are more or less, shall I say fortunately or unfortunately, placed in the same position as Aden. Take, for example, the island of Andamans. It is in the very same inconvenient or convenient geographical position. Geographically, the Andamans is nearer to Ceylon than to India. Why does not the Colonial Government say, 'Give us the Andamans?' We will be glad to make a present of it to them; we would not stand in their way. Secondly, the communiqué says that Aden will not naturally fit into the new federation. Here again the question tortures me. How can the Andamans be fitted into the federation, and if the Andamans can be fitted into the contemplated Indian federation why cannot Aden be fitted in; it is not very difficult; if you can fit in the one, you can fit in the other."

Government members did not vote. The non-official members both elected and nominated, supported the motion and it was adopted.

On 16th September, 1933, Sir Joseph Blore, the Leader of the House in the Legislative Assembly, also moved, "That the Government of India communiqué, dated 20th June, 1933, regarding the future administration of Aden be taken into consideration." There were several amendments on the Order Paper. The discussion did not end on that day and was resumed on 18th September, 1933, when the following substituted motion was adopted, Government members not voting:—

"While recording their emphatic protest against the complete transfer to the Colonial Office of Aden Settlement which has for about a century been an integral part of British Indian administration, the Assembly requests the Governor-General in Council to convey to His Majesty's Government the strong desire of the people of India that the proposed transfer should not take place."

Since the passing of the above two resolutions in the two Houses of the Indian Legislature, there have been more meetings held in Aden protesting against the proposed transfer. The proposed transfer will seriously affect



20<sup>th</sup> Novembris, 1933.] MEMORANDUM BY SIR PHIROZE [Continued.  
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the trading communities of the places who are mainly Indians, Arabs and Jews. The total European population is about 500, of whom nearly 400 are Greeks, Italians and others. There are not more than 100 Britishers and only six firms. Government invited the opinion of Indians. There has hardly ever such perfect unanimity been shown as in this case as is proved by the decisions of the two Houses and which may rightly be taken as the decision of the country at large. If Government flout this opinion, it will result in much disaffection but what is worse is want of confidence in the assurances of Government.

#### APPENDIX.

The Press communiqué of 20th June, 1933, was as follows:—

His Majesty's Government have recently received representations from different communities among the inhabitants of Aden as well as from certain quarters in India, expressing their various views in regard to the transfer of the administration of Aden from the control of the Government of India to His Majesty's Government. The matter is one which is now receiving the consideration of His Majesty's Government and of the Government of India in connection with the impending constitutional changes. Full opportunity will be given for discussion in the India Legislative Chambers at their next session and for all the interests concerned to state their views. Meanwhile, His Majesty's Government think that it would be convenient that the considerations which suggest the desirability of a transfer of the administration and the conditions that would be entailed by such a transfer should be made known so that the problem can be discussed with a full knowledge of the facts.

The reasons which suggest that Aden should not remain linked with India under the new constitution are, that it is an area geographically remote from India; that it would not naturally fit into the new federation; that it is already to some extent under Imperial control, and that it is inseparable in practice from the Aden Protectorate, which has already passed wholly out of Indian control. If it should be decided that the administration of Aden should be separated from that of India, His Majesty's Government contemplate that the following conditions would be established:—

(1) India would be relieved of the annual contribution of approximately £150,000 sterling, or Rs. 20 lakhs, at present payable towards the military and political administration.

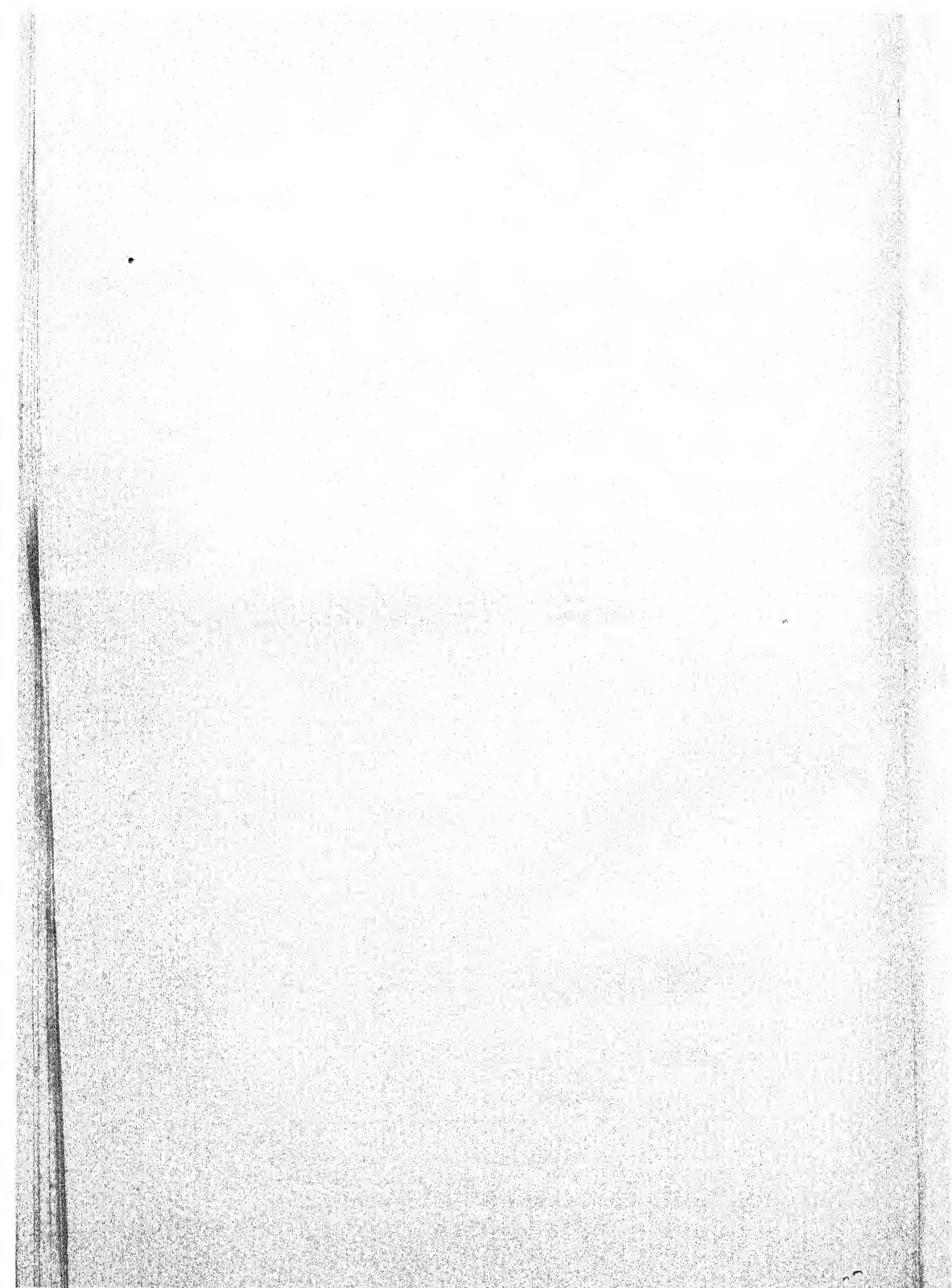
(2) The right of appeal in judicial cases to the Bombay High Court would be maintained.

(3) His Majesty's Government would maintain the existing policy of making Aden a free port unless some radical change in the present economic situation should take place. From their own point of view the abandonment of this policy would clearly in existing economic conditions be financially unsound, since the prosperity of Aden depends largely on its transit trade.

(4) His Majesty's Government would do their utmost to maintain the present standard of administration and would not impose any additional taxation unless such a course became, in their opinion, absolutely necessary.

(5) A proportion of Indian service administrative personnel would be retained in Aden service for some years after transfer took place.

(6) No racial legislation or segregation would be permitted by His Majesty's Government.



# RECORD IX—(contd.)

## ADEN

### Memorandum by the Secretary of State for India

1. I desire to make it clear at the outset that the note which follows expresses views about the future of Aden which I wish to lay before my colleagues of the Joint Committee at this stage for their consideration. The nature of the recommendations to be made to Parliament is a matter for the decision of the Joint Committee, and that decision cannot, of course, be compromised in any way by anything I say now.

#### *History.*

2. Aden has been an important entrepôt of trade since early times—at any rate since the early centuries of Islam. In 1513 it was attacked unsuccessfully by Albuquerque. In 1538 it was acquired by the Turks as a base of operations against the Portuguese, and belonged to them until 1630. Subsequently it was possessed by various Arab Chiefs until 1839, when it was captured by the British with a force of 300 European and 400 Indian troops. The occasion of its capture was an outrage on the passengers and crew of a British buggalow wrecked in the neighbourhood. The East India Company, however, had already in 1829 contemplated making it a coaling station, but at that time had abandoned the idea, owing to the difficulty of procuring labour. Perim, which now forms part of the Aden Settlement, had been occupied by the British in 1799 as a precaution against the possible descent of Napoleon on India, but was subsequently abandoned till 1857, when it was reoccupied.

It will thus be seen (a) that Aden has always been a place of general strategic importance, and (b) that it has been for centuries an Arab town.

#### *Population.*

3. The population of the Aden Settlement (excluding Perim, which has a population of 1,700) at the 1931 census was as follows:—

|               |     |     |     |     |     |     |     |     |        |
|---------------|-----|-----|-----|-----|-----|-----|-----|-----|--------|
| Arabs         | ... | ... | ... | ... | ... | ... | ... | ... | 29,820 |
| Indians       | ... | ... | ... | ... | ... | ... | ... | ... | 7,287  |
| Jews          | ... | ... | ... | ... | ... | ... | ... | ... | 4,120  |
| Somalis       | ... | ... | ... | ... | ... | ... | ... | ... | 3,935  |
| Europeans     | ... | ... | ... | ... | ... | ... | ... | ... | 1,145  |
| Miscellaneous | ... | ... | ... | ... | ... | ... | ... | ... | 331    |
| Total         | ... | ... | ... | ... | ... | ... | ... | ... | 46,638 |

Thus about 64 per cent. of the population is Arab as against about 15 per cent. Indian. The total area of the Settlement is 75 square miles and of Perim five square miles.

#### *Recent history of question of transfer.*

4. Speeches delivered in the debates in the Indian Council of State on 31st August and in the Legislative Assembly on 16th and 18th September, 1933, referred to the history of the various recent steps taken in regard to Aden. Some of these speeches seem to indicate that there is a mistaken impression that His Majesty's Government have led up to the present proposal by a series of *faits accomplis*. In order to correct any such impressions, it may be desirable to summarise the recent history of the question and the present position.

20<sup>th</sup> Novembris, 1933.] MEMORANDUM BY THE  
SECRETARY OF STATE FOR INDIA.

[Continued.]

(i) The political and military administration of Aden has been controlled by His Majesty's Government since 1917, when it was taken over as a war measure. A prolonged discussion as to the financial and administrative responsibility followed the War, and was finally settled by a Cabinet decision of December, 1926, on a basis financially far more favourable to India than previous proposals made by the Colonial Office; the civil (i.e., internal municipal) administration of the Settlement was left with India, and the political control (i.e., sole responsibility for the Protectorate) and military control with His Majesty's Government, who took over the military and political charges with the aid of an annual contribution from Indian revenues (of £250,000 a year for the first three years, and after that one-third of the total annual cost, subject to a maximum of £150,000 a year). India's present liability under this head is about £120,000, but as Sir George Schuster pointed out in the Assembly, it might at any time rise to £150,000. Pledges have been given by the Government of India from time to time that the civil administration will not be transferred to His Majesty's Government without the Legislature and the interests concerned being given an opportunity of expressing their views. In 1931 it was decided, as a measure of administrative convenience, to transfer the administration from the Government of Bombay to the Government of India, and this transfer was made with effect from 1st April, 1932. In November, 1931, Lord Willingdon and Sir E. Howell (then Foreign Secretary to the Government of India) stated to a deputation that this change did not affect the question of transfer to the Colonial Office and was not a step towards any other change. That statement was correct; the decision taken in 1931 was taken simply as a matter of administrative convenience; and if it had not been taken, the constitutional question which has now arisen would have had to be considered none the less.

(ii) Until progress had been made with consideration of the present proposals for Indian constitutional reform, no question arose of revising the decision of 1926 regarding Aden. But as the proposals for an Indian Federation with responsibility at the centre took clearer shape, it became obvious that the question of Aden would have again to be considered with a view to deciding whether the continuance of the existing arrangements would be practicable if the Government of India were converted into a Federal Government. Hence the statement in the White Paper that the future arrangements for the Aden Settlement are under consideration. On 30th May I received a deputation led by His Highness the Aga Khan, of which Sir P. Sethna was spokesman. I noted the views of the deputation and gave them the assurance that no decision would be taken before discussion in the Indian Legislature, and furthermore that, whatever the decision might be, every care would be taken to safeguard existing interests so far as it lay in the power of His Majesty's Government to do so. At the same time I suggested to the deputation, as matter for reflection, the difficulties of fitting Aden into the proposed Indian Federation.

(iii) Subsequently, in order that the question might be discussed by the Legislature and considered by the interests concerned with a full knowledge of the facts, His Majesty's Government authorised the statement published on 19th June (appended to this memorandum and issued in India as the *communiqué* of 20th June, which is appended to Sir P. Sethna's memorandum), stating the considerations which suggest the



20<sup>o</sup> Novembris, 1933.] MEMORANDUM BY THE  
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[Continued.]

desirability of the transfer of Aden and the conditions and assurances which His Majesty's Government are prepared to give if transfer takes place. Since then opportunity has been given, as promised, for full discussion in both Chambers of the Indian Legislature, and steps have been taken to elicit the wishes of the Arab population of Aden itself.

(iv) Thus we now have available all the material required for a full consideration of the question. For my own part I have carefully studied the debates in the Legislature and need hardly say that I attach great weight to the views expressed therein, but I have also had to consider most anxiously the whole question in the light of all the facts, the various and extensive interests involved, and the views expressed in various quarters.

*Difficulty of placing civil administration under Indian Federal Government.*

5. The debates in the Indian Legislature indicate that the true nature of the difficulties of fitting Aden into the proposed Indian Federation may not have been fully appreciated. The only difficulty mentioned in the debates was the fact that Aden is now a Chief Commissioner's Province directly under the Government of India, and members naturally asked why this difficulty could not be met by returning Aden to the Government of Bombay and making it again part of the Bombay Presidency. It is therefore desirable that I should explain more fully the underlying reasons for the assertions in my statement of 19th June, that Aden "would not naturally fit into the new Federation, that it is already to some extent under Imperial control and that it is inseparable in practice from the Aden Protectorate, which has already passed wholly out of Indian control." They are as follows.

It would be extremely difficult, if not impossible, to make a clean separation between the Arab town of Aden and its Arab hinterland, the Aden Protectorate. Similarly, it would be impracticable to effect a complete divorce between the civil administration of the Settlement on the one hand and the political and military control of the Protectorate on the other. For many purposes the whole area forms a single whole. At present there is a condominium, the civil administration of the Settlement being controlled from Delhi, the political control of the Protectorate and the defence of both being placed directly under His Majesty's Government. Naturally there are very great practical difficulties involved in a condominium of this character. The only reason why it works efficiently in practice at all is that in the last resort the decision of all questions arising vests in His Majesty's Government. This is so because the Government of India under its present constitution is in the last resort subordinate to His Majesty's Government. But when the Government of India becomes a Government in which responsibility for the civil administration of Chief Commissioners' Provinces rests upon Ministers, the position will be entirely different and the division of control, which is just workable at present, would become entirely unworkable. This objection would not be removed, but on the contrary would if anything be strengthened, if Aden were made a part of a Governor's Province under the new constitution. Furthermore, for defence purposes it is obviously impossible to make a distinction between the Protectorate and the Settlement, and it is therefore essential that the defence of the latter as well as of the former should continue to be a direct responsibility of His Majesty's Government. But a continuance of the present system, whereby defence vests in His Majesty's Government in respect of the Settlement as well as of the Protectorate, would become con-

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stitutionally anomalous if the Settlement became part of a semi-autonomous Indian Federation. Such a constitutional anomaly would be removed by the retransfer of military control to India but this solution is ruled out by the requirements of Imperial Defence.

*Imperial Interests.*

6. The strategic position of Aden, and its importance from this point of view to the Empire in the East generally and not merely to any single Empire unit, is a strong argument for control by the Home Government. This by itself might be viewed as a decisive objection to the retention of the existing condominium when once the new constitution is established in India. Aden, in fact, besides its importance to the Empire as a refuelling station, is of greater general strategic importance to Imperial communications and to the Empire as a whole than to India by itself; moreover, Aden (Settlement *plus* Protectorate, which for this purpose are an integral whole) is of political importance with regard to Arabia.

*Arab Interests.*

7. One of the most important factors to be considered is the interests of the Arab majority of the Aden population. In the Indian Legislature reference was made to resolutions against transfer purporting to represent the views of the Arabs as well as of the Indians. But since the publication of my statement of 19th June, the object of which was to elicit Arab as well as Indian opinion, I have been at pains to obtain from the Chief Commissioner a report on the real wishes of the Arabs. The Chief Commissioner reports that the Arab community are as a whole satisfied with the existing state of affairs (i.e., with an administration controlled through the Government of India by His Majesty's Government), but that they view with grave misgivings the possibility that the Government of Aden may become Indianised as the result of constitutional changes in India, and fear the subordination of Arab to Indian interests; and (since a continuance of the present state of affairs would in any case be made impossible by the forthcoming Indian Reforms) they would on the whole prefer that the administration of Aden should henceforth be controlled by His Majesty's Government direct.

*Fear of racial discrimination.*

8. One of the fears expressed in the Indian Legislature was that under Crown Colony Government Indians would suffer from racial discrimination. This is really answered by the categorical assurance which I gave on 19th June that, as one of the conditions of transfer, "No racial legislation or segregation would be permitted by His Majesty's Government." There is no parallel at all between the situation in Aden and that in Kenya which has been referred to in the debates in the Indian Legislature.

*Financial effect of transfer.*

9. In the Council of State debate, Sir P. Sethna suggested that, if the civil administration of Aden is transferred, India would lose Rs. 10 lakhs revenue from salt, income tax and super-tax, to set off against the saving on the military contribution. This point was dealt with by Sir G. Schauster in the Legislative Assembly. India would save the military contribution which in 1930-31 was £150,000 (20 lakhs), in 1931-32 £136,000, and in 1932-33 about £120,000 (according to the preliminary figures), and might in any year rise again to the maximum of £150,000. On the other hand, as

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regards the civil administration, she would hand over an approximately even balance. The actual figures of civil revenue and expenditure for the years from 1927-28 to 1933-34 are as follows:—

| Years.                   | Revenue. | Expenditure. | Surplus+<br>Deficit — |
|--------------------------|----------|--------------|-----------------------|
|                          | Lakhs.   | Lakhs.       | Lakhs.                |
| 1927-28 ... ..           | 7.46     | 13.69        | — 6.23                |
| 1928-29 ... ..           | 10.86    | 12.23        | — 1.37                |
| 1929-30 ... ..           | 12.18    | 11.16        | + 1.02                |
| 1930-31 ... ..           | 10.28    | 12.46        | — 2.18                |
| 1931-32 ... ..           | 12.04    | 11.39        | + 0.65                |
| 1932-33 (revised) ... .. | 13.64    | 11.02        | + 2.62                |
| 1933-34 (budget) ... ..  | 12.22    | 11.36        | + 0.86                |

For these seven years the average balance is a deficit of Rs. 0.66 lakhs, or, if the year 1927-28, which was abnormal, be excluded, a surplus of Rs. 0.27 lakhs. For the year 1932-33 there was a comparatively large surplus of Rs. 2.62 lakhs, due to the rise in income tax receipts in Aden in that year. There was a small and precarious surplus in 1931-32 of Rs. 0.65 lakhs and in 1933-34 (budget estimate) of Rs. 0.86 lakhs due to retrenchments. The only qualification of the statement that an approximately even balance would be handed over is that some part of the income tax paid in India in respect of Aden may be lost under the provisions for relief from double income tax; the Government of India are naturally unable to give any exact estimate of this figure, but say that they may have to lose a lakh or two.

#### *Effect of transfer on trade.*

10. It has also been suggested that if Aden is transferred, Indian trade would be lost and Indian merchants would leave and that this has been the result of the transfer of Somaliland to the Colonial Office in 1905. (Prior to that date Somaliland was administered by the Resident at Aden from 1884 to 1893, and by the Foreign Office from 1898 to 1905.) It is stated that traders (Indians, Jews and Arabs) have left the Somaliland ports owing to high taxation resulting from costly administration. However this may be, there is, as a matter of fact, no basis for the comparison between Aden and Somaliland. I understand that a reason why the Somaliland ports have decreased in prosperity is the difficulty in that country of levying direct taxation, owing to the unruly character of the inhabitants, with the consequence that the administration is the more dependent on import duties. But the position at Aden is exactly the reverse, as Aden is a free port and the cost of the administration is met by direct taxation.

#### *Effect of transfer on Aden salt.*

11. Indian salt firms at Aden fear that their interests would be adversely affected by transfer. The position is that salt made in Aden is at present exempt from the additional import duty in India imposed by the Salt (Additional Import Duty) Act of 1931, as amended in 1933, and accordingly shares with salt made in India the advantage of a preference over other "foreign" salt. Under the operation of the Act of 1931 this preference was  $4\frac{1}{2}$  annas per maund, but by the Act of 1933 it has been reduced to  $2\frac{1}{2}$  annas per maund. If Aden ceased to be part of India and no concession were made to Aden salt, it would lose this preference. This is

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not a matter in which the Secretary of State can interfere, as he is precluded from doing so by the Fiscal Convention. If Aden is separated, it will be for the Indian Legislature of the future to decide what terms should be accorded to salt from Aden. The concern shown in the recent debates in the Indian Legislature for the commercial and other interests of Indians at Aden seems to give some ground for hoping that, as I sincerely trust may be the case, the Legislature would not be unresponsive to any appeal on behalf of the Aden salt manufacturers.

*Misunderstanding of the assurances in the statement of 19th June.*

12. The conditions contemplated by His Majesty's Government in the statement of 19th June in the event of transfer are in my view generous and ought to meet any reasonable apprehensions on the part of the Indian interests concerned. The speeches in the Legislature showed that there are certain misunderstandings as to the meaning of these conditions. Those regarding the contribution and the promise that there would be no racial discrimination have been dealt with above. Assurance No. 2 that a right of appeal would continue to lie to the Bombay High Court, has been included among the assurances in the interests of Aden litigants. An undue amount of attention has, I think, been directed to the qualified form of assurances 3 (maintenance of the free port) and 4 (maintenance of the present standard of administration without imposing additional taxation). As regards 3, I would emphasise, what is stated in the assurance, that from the point of view of His Majesty's Government themselves the abandonment of the policy of a free port would clearly in existing economic conditions be financially unsound, since the prosperity of Aden depends largely on its transit trade. The assurance that the policy would be maintained was only qualified by the words "unless some radical change in the present economic situation should take place." I think that critics of this qualification may have overlooked the word "radical." Assurance No. 4 "not to impose any additional taxation" was qualified by the words "unless such a course became, in His Majesty's Government's opinion, absolutely necessary." This is an obviously necessary qualification, as His Majesty's Government could not bind themselves in such a matter for ever. The wording of assurance No. 5, "A proportion of Indian service administrative personnel would be retained in Aden service for some years after transfer took place," has been misunderstood. The meaning was that a proportion of the administrative personnel at Aden would continue to belong to the Indian Service for some years. In the Indian Legislature it has been interpreted to mean that only a proportion of the Indians at present serving among the administrative personnel would be retained for some years, and that the remainder would be sent away. In order to make more explicit the meaning of this assurance, I may say that His Majesty's Government are prepared to give an assurance that, in the event of the transfer of Aden, all Indian administrative personnel serving in Aden at the time of transfer would be retained on the terms of service under which they were then serving, subject only to modification by mutual consent; when vacancies occurred, Indians would remain eligible for appointment (though there would be a gradual substitution of Colonial Service officers); it would be understood that all newcomers to the Aden Service would be appointed on definite terms to be agreed upon in each case, and would have no claim to Indian conditions of service, unless these were specially imported into their agreements or letters of appointment.



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*Additional assurance.*

13. His Majesty's Government are also prepared to give a specific additional assurance that in the event of transfer Indian British subjects would be allowed to enter the Protectorate under precisely the same conditions as any other British subjects.

APPENDIX.

STATEMENT IN ANSWER TO A QUESTION BY MR. DAVID GRENFELL IN THE HOUSE OF COMMONS, DATED 19TH JUNE, 1933.

SIR S. HOARE: His Majesty's Government have recently received representations from different communities among the inhabitants of Aden as well as from certain quarters in India, expressing their various views in regard to the transfer of the administration of Aden from the control of the Government of India to His Majesty's Government. The matter is one which is now receiving the consideration of His Majesty's Government and of the Government of India in connection with the impending constitutional changes. Full opportunity will be given for discussion in the Indian legislative Chambers at their next session and for all the interests concerned to state their views. Meanwhile, His Majesty's Government think that it would be convenient that the considerations which suggest the desirability of a transfer of the administration and the conditions that would be entailed by such a transfer should be made known so that the problem can be discussed with a full knowledge of the facts.

The reasons which suggest that Aden should not remain linked with India under the new constitution are, that it is an area geographically remote from India; that it would not naturally fit into the new federation; that it is already to some extent under Imperial control, and that it is inseparable in practice from the Aden Protectorate, which has already passed wholly out of Indian control. If it should be decided that the administration of Aden should be separated from that of India, His Majesty's Government contemplate that the following conditions would be established:—

(1) India would be relieved of the annual contribution of approximately £150,000 sterling, or Rs. 20 lakhs, at present payable towards the military and political administration.

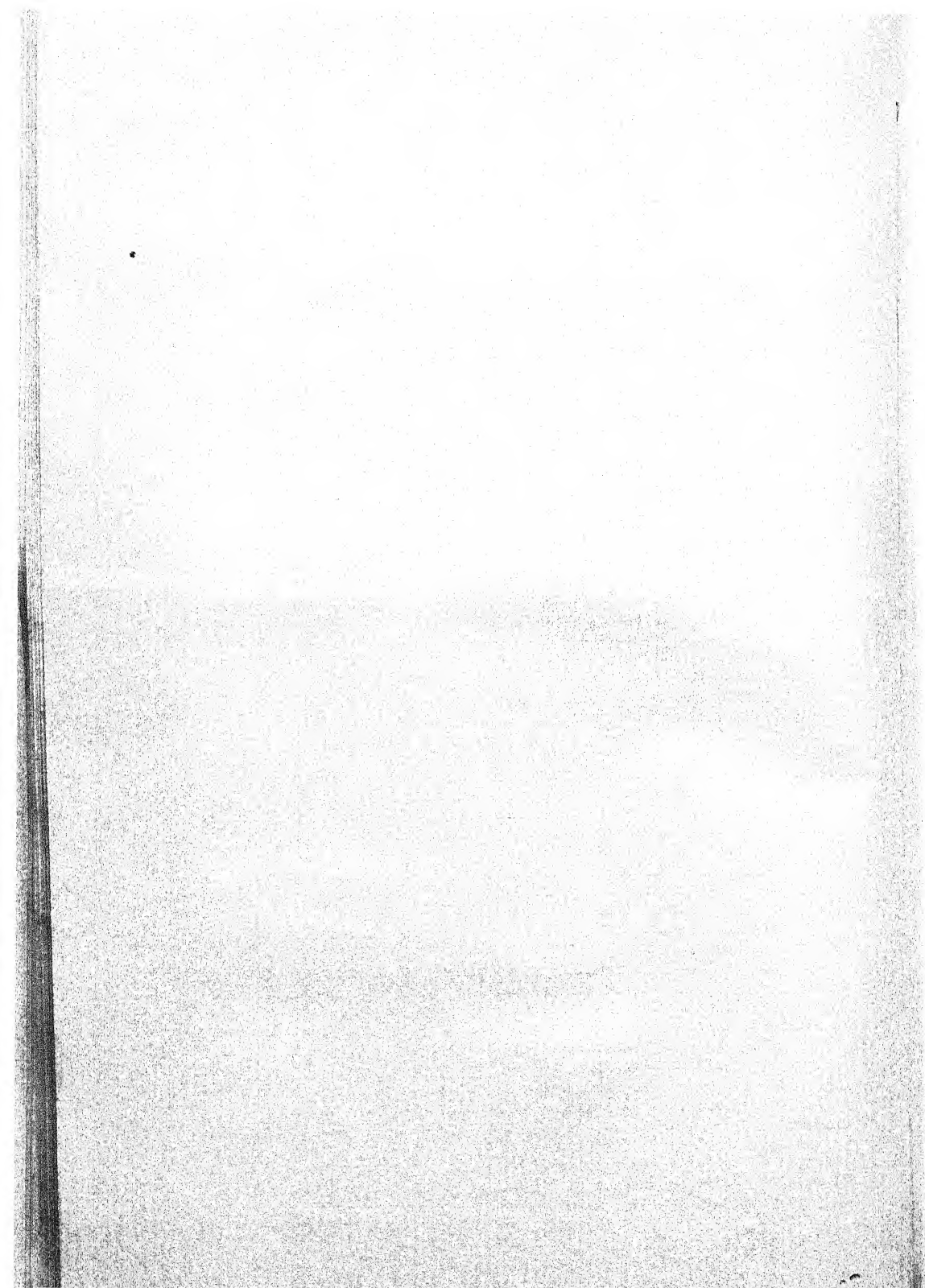
(2) The right of appeal in judicial cases to the Bombay High Court would be maintained.

(3) His Majesty's Government would maintain the existing policy of making Aden a free port unless some radical change in the present economic situation should take place. From their own point of view the abandonment of this policy would clearly in existing economic conditions be financially unsound, since the prosperity of Aden depends largely on its transit trade.

(4) His Majesty's Government would do their utmost to maintain the present standard of administration and would not impose any additional taxation unless such a course became, in their opinion, absolutely necessary.

(5) A proportion of Indian service administrative personnel would be retained in Aden service for some years after transfer took place.

(6) No racial legislation or segregation would be permitted by His Majesty's Government.



## RECORD X

The following Memoranda were handed in by Indian  
Delegates before leaving England

### 1. Memoranda submitted by Sir Akbar Hydari

#### GENERAL FEDERATION.

The purpose of this paper is to state shortly the views of the Hyderabad representative on Federation and his comments on the White Paper. It is hoped that a concise, although not perhaps exhaustive, statement of this kind may be of use to the Joint Select Committee in its deliberations.

#### PART I.—GENERAL.

1. The object of the State is and always has been whilst preserving the sovereignty of H.E.H. the Nizam to co-operate to the best of its ability in furthering the interests and political development of All India under the ægis of the British Crown. In our opinion, this object can be achieved, and perhaps only achieved, by the establishment of an Indian Federation on the general lines discussed during the past three years, provided always that certain fundamental conditions are satisfied. It is not without interest to note in this connection a Memorandum written by Sir Akbar Hydari, on the 2nd October, 1930, entitled "Federal Scheme for India," which will be found at p. 181. This shows clearly the general lines upon which the State has approached the problem from the outset.

2. It is hardly necessary to say that one of the fundamental conditions referred to above is that the Federal Government in favour of which the States will be parting with some of their existing powers shall have responsibility in the exercise of such powers. Responsibility to a substantial extent is also necessary, so that the States will be able to exercise a real influence through the representation which they will have in the Federal Legislature. Another condition is that the Provinces, and not only the States, should possess a sufficient degree of autonomy. Law and Order is not made a federal subject in the White Paper and it is essential that it should remain a unit subject. This matter is also dealt with in Sir Akbar Hydari's Memorandum dated 28th May, 1931, and entitled "Memorandum on Central Subjects," which begins at p. 185. The White Paper as it stands is in general accord with the State's views on these points.

3. Another fundamental condition is that the Governor-General and the Governors shall be appointed by His Majesty on the advice of his Ministers in the United Kingdom. This is, of course, the intention under the White Paper, and no doubt it will be clear under the provisions of the Act. The same remark applies to the Commander-in-Chief and the Judges of the Federal Court.

4. It is vital that the relations of the State with the Crown in the United Kingdom should be safeguarded and preserved. The White Paper deals with this point (a) by the reservation of Defence and external affairs to the Governor-General acting in his discretion and under responsibility to the Secretary of State, and, through him, to Parliament; and (b) by the exclusion of these relations from the Federal sphere except in so far as acceptance by the State of Federal powers and jurisdiction brings them within that sphere.

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By acceding to the Federation the State would be consenting to a given state of things and no other. It would be acceding to a written Constitution containing certain specific provisions, and any fundamental or major alteration in these provisions unless made with the State's consent should set it free from the obligations it had undertaken. In particular it will be remembered that throughout the discussions preceding the White Paper Defence was treated as a Crown subject outside the Federal Sphere. Although in the White Paper this proposal is modified, at any rate in form, the State places reliance upon the fact that the effective reservation of Defence to the Crown is an integral part of the proposed Constitution and that no modification could at any time be made in this regard without a fundamental change in the Constitution. The last thing the State would wish would be that the dissolution of the Federation should be contemplated as a practical eventuality, and it does not seem desirable expressly to provide for a formal right of secession. On the other hand, the position indicated above should, in our view, be established as a matter of law. Further, in view of the extreme importance to the State of its engagements with the Crown in the United Kingdom, and in particular those touching Defence, it would be necessary to provide effectively, and independently of the Constitution Act, for the continuance in force of the military guarantees under existing treaties notwithstanding any alteration in the Constitution and for the revival of any treaty obligations affected by the accession of the State to the Federation in the event of such accession lapsing.

5. It may be desirable to refer briefly to the subject of Paramountcy. As the State understands the White Paper scheme, this contemplates that certain powers now exercised by the Crown in the name of Paramountcy will pass over to the Federal sphere for exercise by Federal organs by virtue of the State's agreement to that effect, whilst the remaining Paramountcy powers will continue in the hands of the Crown in the United Kingdom acting, in India, through the Viceroy. (See Introduction, para. 7, 8, 9; Proposals 1, 2, 3, 7.) It is clear that once a Paramountcy power passes to the Federal sphere it must become in all respects a Federal power, identical in nature and in the manner of its exercise with any other Federal power. There cannot, it seems, be any doubt that this is the intention, but the point should be borne in mind when drafting the Constitution Bill. Moreover there should be no room for the exercise of Paramountcy powers for the enforcement of Federal duties unless and until there is a decision of the Federal Court to which the State has failed to give effect.

6. Another and different question connected with Paramountcy may be referred to. It is obviously necessary that the Viceroy should have the means of implementing his duty for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States. As regards finance this is covered by Proposal 49 (iii) of the White Paper, but it is not clear how the matter stands in other respects, e.g., as regards the use of the military forces. Proposal 6 suggests that the use of the army in India might be held to be limited to Federal purposes.

7. In its examination of the White Paper Proposals it has been increasingly borne in upon the State that some provision should be made in the Constitution to ensure that legislation on Federal Subjects shall be fairly framed and applied as between the different parts of the Federation. There are certain particular heads under which provisions for this purpose are especially appropriate and necessary. As regards Railways, the conditions



16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
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[Continued.]

applicable to which are well-known, legislative precedent exists in England and elsewhere making it possible to put forward concrete clauses of a somewhat elaborate character based upon actual experience, and the State is submitting proposals to deal with that particular subject. But there are other heads which cannot be approached in the same way. For example, air navigation is a matter which seems clearly to call for safeguards analogous to those applicable to railways, and yet the comparative paucity of experience and the impossibility of forecasting future developments render it impracticable to proceed on the same detailed lines. Again, take the wide and somewhat indefinite subject described as development of industries. Some protection from unfair discrimination seems clearly advisable although it is difficult and probably undesirable to attempt to provide specifically for each particular instance that may arise. Other subjects where equality of treatment is obviously necessary are, for example, customs, excise, and other taxation. These are perhaps the most striking illustrations of the need for safeguards of the nature under discussion, but they are not exhaustive. The possibility of unfair discrimination exists under most of the heads in Appendix VI, List I, of the White Paper.

As at present framed the only provision made in the White Paper with regard to legislative discrimination is under Proposals 122-124. These provisions are strictly limited both as regards the nature of the prohibited acts, and the ground on which they are based (religion, descent, caste, etc.), and they are also limited as regards territorial operation. They only apply in British India.

The State proposes that the Constitution should contain a provision of a broader kind in addition to Proposals 122-124. It is conscious of the need not unduly to shackle the Federal legislature and Government by constitutional restrictions, but it considers that a clause such as it desires should not have this result. Taking certain provisions of the Australian Constitution as a general guide the State would suggest that the clause to be inserted in the Indian Constitution Act should provide in substance that the Federation shall not by legislative or administrative action give undue or unreasonable preference to one part of India over another part, or to one Unit over another Unit or discriminate unfairly between one part of India and another part or one Unit and another Unit. The Federal Court would, of course, decide in case of dispute whether any particular case came within the clause.

8. In the State's view the successful working of the Federal Constitution will depend to a very large extent upon the Federal Court. This institution is, as it were, the corner stone of the edifice. Out of its judicial wisdom will grow the constitutional Common Law which will shape the day-to-day working of the central and local organs. A combination of absolute impartiality as between the different interests involved and outstanding legal and statesmanlike qualities will be required of the members of the Court. With these considerations in mind, the State views with concern any proposal which may tend, whether now or in the future, to blur the true function of the Federal Court as the interpreter and guardian of the Constitution. The State appreciates the desirability of uniformity in the interpretation of Federal laws and would be prepared to consider favourably any proposal limited to this particular extension in the jurisdiction of the Federal Court as laid down in the White Paper, provided it were carried out in such a way as to secure that the intervention of the Federal Court was limited to the giving of an opinion on the construction of Federal statutes, the decision of cases being retained by the State Courts.

16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
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[Continued.]

But the State feels strongly that any alteration of the present scheme in the direction of allowing a combination of the functions of the Federal Court with those of a Supreme Court would be unacceptable.

9. We are not dealing in this Memorandum with the important subject of Railways, because a separate Memorandum on this head is being laid before the Committee.

10. One more general question requires consideration. It would be impossible for the State to accede to the federation unless it was plain beyond doubt from the constitutional documents that the sovereign status of H.E.H. the Nizam was fully maintained and preserved. One illustration of this is to be found in the question of administration. Throughout the Round Table Conferences the discussion as to the division of powers between the Federation and the units proceeded upon the basis of a clear cut distinction between policy and legislation on the one hand and administration on the other. The first eight subjects in Appendix VI, List I, of the White Paper were, of course, then treated as outside the federal category, but leaving those subjects aside for the moment, most of the subjects which now appear in the federal list were described as being federal "for policy and legislation" only, and it was on this footing that the State envisaged the question of accepting any given subject as federal. The distinction has been dropped in the White Paper, but the State desires to make it plain that it adheres to the substance of the conception and desires that it should, as far as possible, be realised in practice, whatever form the constitutional provisions may take. While the State is prepared to agree that Federal legislation on certain subjects shall have effect in the State, the State could not agree to a provision for the formal cession or transfer of administration to the Federation. Administration falls, broadly, into the following parts: (1) The laying down of detailed regulations for giving effect to a statute and the activities of a central department or office, including the issue of explanatory circulars and other written matter; this may be described as central administration. (2) The actual carrying out on the spot of legislation and regulations by means of officials and otherwise; this may be called local administration. (3) The functions of inspection. Whilst (1) may properly be the function of a central authority the State wishes, generally speaking, to keep (2) completely in its own hands in regard to the subjects which it accepts as Federal. With respect to (3) it would not object to normal routine inspection, by arrangement with the State, on behalf of the Governor-General acting in his discretion.

Other illustrations of a different kind, where the sovereign position of the Nizam is involved, are found in the subjects in which the State will have to reserve to His Exalted Highness the right to mint his own coinage and issue his own stamps. These examples are not, of course, intended to be exhaustive but they are given in order that the Committee may have an indication of points in which the sovereignty of His Exalted Highness is manifestly concerned. As to such matters in particular the State would wish the Committee to be in no doubt as to the attitude of the State.

#### PART II.—DETAILED COMMENTS ON WHITE PAPER.

*These are dealt with below under the numbers of the White Paper Proposals. Proposals 2 and 3.*

The State refers to the Secretary of State's answer to Question 7895 in his evidence before the Joint Select Committee and reserves its right to comment on the drafting of these Proposals. The same observation applies to Proposal 7.

16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
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[Continued.]

In Proposal 3, third line, delete the words "or otherwise." The State understand that this is accepted—(Vide Question 7705).

The State asks that the Preamble to the Act should mention explicitly that the rights of the States and their relations with the Crown remain outside the Federal sphere and subject to the present regime except in so far as alteration is effected by the State's acceptance of Federal authority—(Vide Question 7738).

In the last sentence of Proposal 3 it is suggested that the "obligations" of the Crown should be referred to as well as the "powers."

*Proposal 18 (e).*

The scope of this special responsibility should be made clear. Having regard to paragraph 29 of the Introduction it appears to be the intention that Proposal 18 (e) should cover, and cover only, discrimination of the character defined in Proposals 122-124. As drafted, however, Proposal 18 (e) is wider as regards space and persons and possibly narrower as regards the limitation introduced by the word "commercial."

*Proposal 18 (f).*

The State asks for the addition of the words "and vital interests" after "rights" in White Paper Proposals 18 (f) and 70 (e). It understands that this has been accepted—(Vide Question 8669).

*Proposals 24 and 27.*

The State refers to White Paper Proposal 24 and to the Secretary of State's answer to Question 7199 that the Ruler of a State may vacate the seat of a member of the Council of State appointed by him. The State desires this to be so, but it is not clear that the White Paper Proposals do in fact enable a member of the Council of State to retire or the Ruler of a State to vacate the seat of his nominee.

The State suggests that a new Proposal should be inserted after 27:—

"27a. A member of the Council of State appointed by a Ruler of a State shall vacate his seat if called upon so to do by notice in writing from the Ruler of such State."—(Vide Question 7199).

The State has the same comments to make with regard to the retirement of a nominee to the Assembly appointed by a Ruler of a State and suggests the insertion of a new Proposal 30a as follows:—

"A member of the Assembly appointed by a Ruler of a State shall vacate his seat if called upon so to do by notice in writing from the Ruler of such State."

*Proposal 26—With regard to the strength of the Federal Legislature.*

For "260" substitute  $\frac{100}{60}$ , for "150" substitute  $\frac{60}{36}$ , and for "100" substitute  $\frac{40}{24}$ .

Delete the last two lines from "and not more" and substitute a clause providing that any deficiency in the full number of members appointed by the Rulers of Indian States will be made up partly by members nominated by the Rulers of the acceding States and partly by the Governor-General in his discretion.

The State is submitting a separate Memorandum on this subject—(See page 189).

16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
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[Continued.]

*Proposal 29.*

Substitute "150" for "375," "100" for "250," and "50" for "125." Add at the end a similar clause to that suggested under Proposal 26 above.

*Proposal 34.*

Insert in Proposal 34 (f) after the word "having" the words "otherwise than as a member of the public." Further it does not seem clear as the Proposal is drafted what it is to be the effect of disclosure or when or to whom it is to be made.

The same points arise under Proposal 84 (f).

*Proposal 102.*

Insert "(a)" after the words "to make rules" and insert at the end of the first paragraph:—

"(b) prohibiting, save with the prior consent of the Governor given at his discretion, the discussion of or the asking of questions on matters connected with any Indian State."

The State understands that this suggestion is accepted—(Cf. Proposal 52 and Questions 8670, 8671).

*Proposal 110.*

The State refers to this Proposal and reserves its right to comment on the words in brackets when it sees what is proposed—(Vide Question 8673).

*Proposal 111.*

The State refers to this Proposal and to the words "(exclusively federal)" following the words "List I" in Appendix VI.

The State understands that it is the intention of the White Paper Proposals that the States shall have concurrent powers of legislation with respect to subjects in Appendix VI, List I. It therefore seems necessary to delete the word "exclusively" from the heading of this List on p. 113, and it would also be advisable to delete the same word from the heading of List II. The mutually exclusive character of the powers of the Federal and Provincial Legislatures with respect to the two lists are sufficiently provided for by Proposals 111 and 112.

The sentence in Proposal 111 beginning "Federal laws will be applicable" calls for consideration. It is thought that the words "Federal laws" are intended to cover any Federal law validly made with respect not only to a subject in List I, but also to a subject in List III. Whether this is so or not, the position should, it is submitted, be made plainer. Further, it is presumably intended to convey by the word "applicable" merely that the Federal laws in question are to be personally binding upon British subjects and servants of the Crown within any part of India outside British India, and upon Indian subjects of His Majesty anywhere outside India, so that if and when they return to British India they can be held answerable for any breach of the law committed outside. Just as it is obviously not meant that Federal laws would be operative as the law of the land, or enforceable, outside India, e.g., in France, so also it cannot be intended that Federal laws with respect to a subject not accepted as Federal in the Instrument of Accession should be so operative or enforceable in a State. But it might be held that by acceding to a Constitution containing a clause of this character a State undertook, as regards British subjects and servants of the Crown, to apply, or allow the enforcement of, all Federal laws without distinction. The State thinks that the language of this passage



16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
SIR AKBAR HYDARI.

[Continued.]

should be reconsidered, and suggests that if the point just raised is not otherwise met a proviso should be added to the effect that nothing in the clause shall be deemed to confer upon the Federation any right, or to impose upon a State any obligation, to give effect in a State to any Federal law not operative in the State under the preceding sentence in Proposal 111.

*Proposal 117.*

For "subject" in line 2 substitute "matter" and delete the words "a" and "subject" in line 4.

*Proposal 118.*

The State suggests that this Proposal should be deleted. It is to be noted that the Proposal as drafted applies only as between Federal Acts and Provincial Acts, inasmuch as the question of exclusive powers does not arise as between the Federation and the States. Apart from this point, if a time limit of this sort is laid down an impasse might result if e.g., the Federal Legislature acting within its powers dealt with the same subject as the invalid but unimpeachable Provincial Act in a manner inconsistent with it. It must be possible to challenge validity at any time.

*Proposal 128.*

Insert after "Governor-General" in lines 1 and 6 the words "acting in his discretion." In line 4 substitute "by" for "through the agency of" and "Federal legislation" for "any Federal purpose." Add at the end: "The provisions of any agreement made in pursuance of this Proposal shall, so long as the agreement remains operative, have the same force and effect as the provisions of the Constitution Act."

*Proposals 131 and 132.*

The effect of these Proposals would apparently be to transfer to the Federal and Provincial Governments and to the Governor-General and Provincial Governors all State property, and all powers in relation thereto now exercised by the Secretary of State, subject to the exceptions laid down with regard to railways and property outside the Federal and Provincial spheres. Presumably the property and powers transferred will include military works and other property pertaining to Defence. As the Proposals stand they would appear to place the property and powers in question in the hands of the Federal and Provincial Governments as such without qualification. It appears necessary to indicate that property and powers appertaining to the Reserved Departments are vested in the Governor-General in a special capacity and subject to his discretion.

*Proposal 134.*

It would be preferable that the last few words of this paragraph should read "on all the Federal and Provincial revenues of India."

*Proposal 136.*

Read:

"Revenues derived from sources mentioned in Appendix VI, Lists II and III, will be allocated as provincial revenues.

"Revenues derived from sources mentioned in Appendix VI, List I (but in the case of States only in so far as they have accepted such sources as federal) will be allocated as federal revenues; but in the cases," etc.

The purpose of this amendment is to avoid use of the words "exclusive power" which are incorrect as regards States.

16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
SIR AKBAR HYDARI.

[Continued.]

*Proposal 139—Allocation of Revenues between Federation and Provinces.*

In the Marginal Note, for "taxes on the income of companies" substitute "corporation tax."

In the first paragraph delete the words: "less than 50 per cent. nor" and substitute "50" for "75."

In the last sentence beginning "But the Governor-General" insert after "discretion" the words "from time to time and for such period as he thinks fit" and substitute for "these reductions" the words "the programme of reductions."

*Proposal 141.*

Add at the beginning:

"If at any time the Governor-General having exercised his powers of suspension under Proposal 139 is of opinion in his discretion that all reasonably possible economies have been made and that further indirect taxation is not in the public interest and that Federal expenditure cannot be met from the resources available to the Federal Government he may declare a state of financial emergency and thereupon during the continuance of such emergency".

In the last sentence beginning "But the States" for the words after "counterpart to" substitute: "any addition to taxes on income in force from time to time above the level prevailing immediately before September, 1931, and not exceeding in rate the special addition imposed in September, 1931: though the special addition imposed in September, 1931, will in other respects be deemed to be Federal surcharges."

"Prescribed basis": Reference is made to the Secretary of State's answer to Question 8401 and the right is reserved to comment on the basis to be prescribed when formulated. It is suggested that in fixing the contributions of the States regard should be had to the population of the States and the known superior taxable capacity of the Provinces. In any case it would be desired that the basis prescribed should not involve investigations into the taxable capacity of individuals.

*Proposal 142.*

For the words: "taxes on the income or capital of companies" and "taxes on companies" substitute in each case "corporation tax."

For the last sentence beginning "Any taxes so imposed" substitute: "If any State so elects the liability for corporation tax attributable to companies in the State will be assumed by the State and the amount of such tax will be collected directly from the State by the Federal Government and not from the company."

Add at the end:

"The profits or income of a trade or business carried on by or on behalf of a State-member, including the profits or income of a company owned and controlled by a State-member, shall not be liable to or be taken into account for the purpose of the calculation of corporation tax."

Insert in a general interpretation clause the following definitions:

"Corporation tax" means a super tax (being an additional duty of income tax above the standard rate of income tax for the time being in force) on the income of companies. 'Income tax' and 'taxes on income' do not include corporation tax."

*Proposal 150.*

Insert after the words "provision will be made" the words "in the Constitution Act."

16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
SIR AKBAR HYDARI.

[Continued.]

*Proposal 151.*

Substitute "65" for "62."

As already stated the State assumes that the members of the Federal Court will be appointed by His Majesty on the advice of his United Kingdom Ministers. The terms used in the Act should make this clear.

*Proposal 153.*

Insert after the words in (a) "has been for at least five years a Judge of a Chartered High Court" the words "or of the High Court of a State."

Delete the words in (e) "of any High Court or of two or more High Courts in succession" and substitute "of any Provincial or State High Court or of any two or more of such High Courts in succession."

*Proposal 155.*

In the fourth line after the word "Act" insert the words "or of any Instrument of Accession."—(Vide Question 8676.)

At the end of sub-paragraph (ii) insert the same provision as to parties as appears under sub-paragraph (i)—(See Questions 14124 and 14125).

*Proposal 156.*

In lines 2 and 3, for the words "or any State Court" substitute the words "or from any State Court of ultimate jurisdiction" and in lines 6 and 7 for the words "or of the High Court of the Province or State" substitute the words "or of such Provincial or State Court."

*Proposal 158.*

For this Proposal substitute "an appeal will lie without leave to the King in Council from any decision or opinion (*see* Proposal 161) of the Federal Court."

*Proposal 160.*

Insert at the end the words "the enforcement of the Orders or Judgments of the Federal Court within a State will, unless the Instrument of Accession otherwise provides, remain with the State." In line 5 insert after "Federal Court" the words "and decisions of the King in Council on appeal from the Federal Court." In line 6 insert after "Federal Court" the words "and of the King in Council on appeal from the Federal Court."

*Proposal 161.*

Delete the word "justiciable."—(Vide Questions 8678, 8679.)

In the State's view it is desirable that the valuable power here provided for should operate in the same way as, e.g., under Section 55 of the Canadian Supreme Court Act. The hearing should be public and the opinion of the Court should be a reasoned judicial pronouncement. Anything in the nature of private advice to the Governor-General would be clearly inconsistent with the dignity and character of the Tribunal contemplated.

*Proposal 192.*

Insert in the first line after the word "authority" the words "in British India."

16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
SIR AKBAR HYDARI.

[Continued.]

## APPENDIX VI, LIST I\*.

*Subject 3.*

This subject should be amended by the addition at the end "other than naval, military and air works of the armed forces maintained by Rulers of Indian States."

*Subject 5.*

This subject should be amended by the addition at the end of the words "in the Provinces."

*Subject 7.*

The State suggests that a general definition should be included in the Act as follows:—

"Ecclesiastical Affairs" means affairs relating and incidental to the provision of Christian religious ministrations for persons in the service of the Crown in India.

*Subject 9.*

The State suggests the following amendment:—

Add after "into India" the words "(other than immigration of persons entering India for the purpose of taking up employment in and by a State)."

*Subject 12.*

The State suggests the following amendment: Insert in paragraph (a) after "of the State," "construction of Railways otherwise than by or on behalf of the State."

The State further submits with regard to the Federal Railways and its own Railways a separate Memorandum entitled "Railways under the Federal Constitution. Proposals of the State of Hyderabad," from which the constitutional provisions desired by the State on this subject appear.

*Subjects 14 and 17.*

The State suggests that these two subjects should be combined and should provide:—

"Navigability of, and navigation by mechanically propelled vessels on, inland waterways passing through or between two or more units."

The State suggests that a clause should be inserted in the Act providing for freedom of navigation on the lines adopted in other Constitutions. Disputes under such a clause might either be determined by the Federal Court or by a tribunal of the kind indicated by the Secretary of State to the Joint Select Committee in answer to Question 12,861.

*Subject 25.*

The State asks that this head should be amended so as to make it plain that it does not apply to charitable or municipal corporations or other non-trading or public or semi-public bodies. This would be met if the words "and other" were omitted.

\* This Note only deals with the amendments which the State suggests. It does not deal with the reservations which the State may desire to make.



16<sup>o</sup> Novembris, 1933.]GENERAL MEMORANDUM BY  
SIR AKBAR HYDARI.

[Continued.]

Apart from this point, the State is in considerable uncertainty as to what the word "regulation" would be held to cover and feels that this subject should be further considered and defined.

*Subject 28.*

The State thinks that it should be made clear by re-drafting that this head does not cover control of production, supply and distribution, which are included in Provincial Subject 37, but merely such matters as safety regulations.

*Subject 29.*

The State suggests that this head should be amended by the insertion of the word "Private" at the beginning.

*Subject 33.*

Uncertainty is felt as to what this head is intended to cover. The State thinks it should be made clear that this head only relates to driving licences, and, if desired, to licences merely allowing motor vehicles to use the roads.

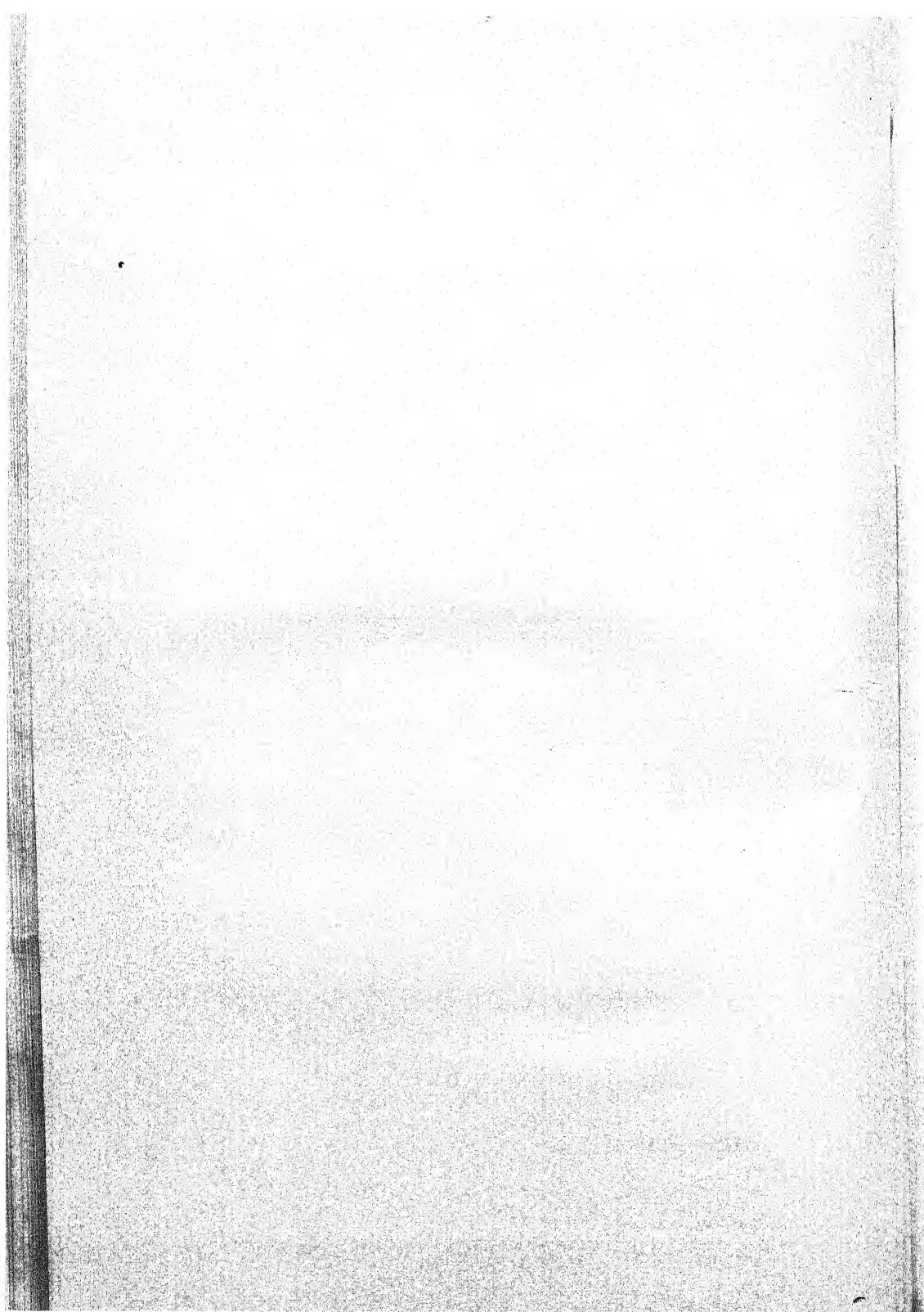
*Subject 41.*

The State suggests that, in order to make the position clearer, head 41 should be made to read: "Census and statistics for the purposes of the Federation."

*Subject 46.*

The State submits that this subject should either be omitted or re-drafted. If it is merely intended to cover rights of property incidental to the exercise of Federal powers, or such matters as fiscal immunity, it appears to be unnecessary. As it stands it is difficult to determine the scope of this head.

A. HYDARI.



## RECORD X—(contd.)

### 1A. Memorandum by Sir Akbar Hydari, dated 2nd October, 1930, and entitled "Federal Scheme for India "

The whole field of administration of Greater India, meaning thereby British India and Indian States, India may be divided into three circles:—

(1) Administration of a series of autonomous Indian Provinces each governed by a Governor appointed by the Crown and a congeries of Indian States, each ruled by a hereditary Ruler recognised by the Crown.

(2) Administration of subjects which the Indian States and the British Indian Provinces make over to a Federal Executive responsible to a Federal Assembly and which are of common concern for the well-being of Greater India.

(3) The sovereignty of the Crown, which is responsible for (a) administration of defence, political relations with the Indian States and foreign relations; (b) the fulfilment of financial obligations and maintenance of general financial stability; (c) general oversight over all the Provinces of British India to ensure good government, tranquillity, peace and order; (d) dispensation of honours, titles, etc.; (e) appointment of its representatives, viz., the Viceroy, Governors of Provinces, etc.; (f) administration of Backward Tracts.

British Indian Provinces will enjoy full autonomy in all subjects except (a) such as are made over by Statute, as subjects of concern to Greater India, for administration through a Federal Executive responsible to a Federal Council, and (b) such as have been reserved for the Crown. "Law and Order" in British India must come under the administration of the Provinces, but it is important that the head of the Police has certain statutory powers, which really the head of every large department should possess if he does not possess them already, namely, of appointment and control, with the right of appeal to the Governor.

In the Statutory Commission Report, the circle of Federal subjects (see page . . . ) is narrower than that of Central subjects which the Commission propose to bring under a Federal Assembly at the Centre, and the so-called Federal Assembly has really been implemented for controlling the British Indian Provinces from the Centre, rather than for dealing with subjects of common concern to British India and the States. This is from the Federal point of view highly undesirable. The Federal Assembly is thereby made lopsided, with a composition varying according as it is dealing at the time with purely British Indian subjects or with Greater Indian subjects, i.e., truly Federal subjects. It tends to make the domination of British India over Indian States more pronounced than it must in any case be from the fact that British India will have a larger number of representatives on the Federal Council than the Indian States. In the annexure an attempt is made to classify the present Central subjects into Crown, Federal and Provincial subjects, according to their nature. Such a division, which is purely tentative, obviates the necessity of having a hybrid Federal Assembly with the dual function of dealing at one time with subjects common to the Provinces and to the States and at another with subjects which are common only to the Provinces.

16<sup>o</sup> Novembris, 1933.] FEDERAL SCHEME—MEMORANDUM [Continued.  
BY SIR AKBAR HYDARI.

The constitution of the Federal Council should, so far as is fair and reasonable, conform to the principle of equal representation for each Federal unit. It might consist of 36 representatives for the provinces, elected by the provincial Legislature on the principle of proportional voting, 24 from Indian States and 12 nominated by the Crown. The Federal Executive might consist of a Minister for Finance, a Minister for Transport, a Minister for Commerce, a Minister for Labour, and a Law Member. Special Statutory powers should be reserved for the Finance Member to ensure the stability of the Indian Finances, and the Crown nominations must make adequate provision for the due representation of the interests of capital and very minor (in number) communities, like European. There will be a Federal Court for seeing that the different bodies and administrations remain within their constitutional field, also for adjudicating disputes between the Federal units *inter se*, or between an Indian State and the Federation or a Federal unit. after co-opting if necessary a representative from each of the two parties.

The Crown will be assisted in the performance of its duties (see Annexure A) by the Commander-in-Chief and a Secretariat of Expert Advisers for (a) Home, (b) Political, (c) Foreign and (d) Finance matters.

A. HYDARI.

“S.S. Ranchi,”

2nd October, 1930.

#### A.—CROWN SUBJECTS.

1. Oversight over Provinces and States for ensuring good government, tranquillity and peace and order of British India and Indian States.
2. Defence of India.
3. External Relations.
4. Relations with States in India.
5. Political Charges.
31. Central Police Organisation.
42. Territorial changes.
43. Ceremonial, titles, orders, precedence and civil uniform.

Note.—The Indian States should be indifferent in which category they are placed, whether Crown or Provincial or Federal.

44. Immovable property at present in the possession of the Governor-General in Council.
15. Indian Audit Departments.
34. Ecclesiastical Administration.
40. All-India Services.
45. Public Service Commission.

N.B.—The numbers given refer to the numbers in the Devolution Rules, Schedule I.



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16<sup>o</sup> Novembris, 1933.] FEDERAL SCHEME—MEMORANDUM [Continued.  
BY SIR AKBAR HYDARI.

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B.—FEDERAL SUBJECTS.

5. Communications :  
Railways and extra-Municipal Tramways.  
Aircraft.  
Inland Waterways.
  6. Shipping.
  7. Lighthouses.
  8. Port quarantine.
  9. Major Ports.
- 
10. Posts, Telegraphs and Telephones.
  11. Taxation :  
Customs.  
\*Cotton Excise Duties.  
\*Income Tax.  
Salt and Opium.  
\*And other sources of All-India Revenue.
  12. †Currency.
  14. Savings Banks.
  17. Commerce, including Banking and Insurance.
- 

22. Stores and Stationery for Federal Departments.
23. Control of Petroleum and Explosives.
32. Arms and Ammunition.
27. Inventions and Designs.
28. Copyright.
29. Emigration and Immigration and Indians Overseas.
39. Census and Statistics.
46. Benares and Aligarh Universities and Chiefs' Colleges.

C.—PROVINCIAL SUBJECTS.

- 46 & 47. All matters not specifically included among Crown or Federal subjects.
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\* Special convention in the case of those States which do not have any of these taxes in their fiscal system.

† Special convention in the case of those States which have their own Post Offices and Currency.

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16<sup>o</sup> *Novembris*, 1933.] FEDERAL SCHEME—MEMORANDUM [Continued.  
BY SIR AKBAR HYDARI.

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## D.—SPECIAL SUBJECTS BY CONVENTION.

A.—*Crown*.

## 13. Public Debt of India.

(With regard to the past debt of India the responsibility for its proper liquidation should rest with the Crown. With regard to future borrowings, the responsibility must rest with the agency which requires the debt except that the mode, time, etc., should be for the decision of the Finance Member and the Viceroy.)

B.—*Federal*.

## I.—Legislation.

## 16. Civil Law.

## 30. Criminal Law.

## 41. Special Provincial Legislation.

(There should be a special Convention dealing with these. The initiative might come from the Crown or from any of the Provinces or States to have a legislative measure discussed either in the Federal Council or in special Conventional Assembly consisting of representatives of such Provinces and such Indian States as may be prepared to have legislation on identical lines introduced into their States with such minor reservations as they may at the time announce.)

## II.

## 19. Control of production, supply and distribution of special articles.

## 20. Development of special industries.

## 25. Control of Mineral development.

(These might be Federal but any Indian State or groups of States could claim exemption if it had enjoyed exemption before and could command one third minimum voting strength of the Federal Council to permit the exemption.)

## III.

## 24. Geological Survey.

## 26. Botanical Survey.

## 33. Central Research Agencies and Institutions.

## 36. Archaeology.

## 37. Zoology.

## 38. Meteorology.

(These could be made Federal with a Convention similar to that with regard to legislation in case Indian States desire to participate in and pay for any of the Surveys.)

C.—*Provincial*.

## 18. Trading Companies.

## RECORD X—(contd.)

### 1B. Memorandum by Sir Akbar Hydari on Central Subjects (28th May, 1931)

The Federal Structure Committee came to the tentative conclusion that non-provincial subjects might fall into one of two categories, namely, Federal and Central. The problem with which it was then faced and for which the Committee did not find a final solution was the manner in which these two classes of subjects could be legislated for and administered.

2. The course that first suggests itself is to have two separate Governments; one a Federal Legislature and Executive for the Federal subjects and the other a British Indian Executive and Legislature for the Central subjects. But this is open to the objections that the presence of two Executives and two Legislatures working side by side would lead to friction and that it would complicate the administrative machine. At the same time, it was generally recognised by the Federal Structure Committee that there must be some supervising authority capable of co-ordinating and finally directing policy in Central subjects where co-ordination is in the interests of British India and that whatever device was adopted so far as a Legislature was concerned, for dealing with Central subjects there could only be one Executive. Prominent among the subjects proposed to be classed as Central is Law and Order which should ordinarily be included in a Home Minister's portfolio. Assuming for the moment that instead of an irremovable Home Member a Home Minister is appointed and that the Central subjects are dealt with by the British Indian representatives in the Federal Legislature alone, what would happen if a vote of no-confidence in the Home Minister is brought forward in the Central Legislature so formed, and is carried? The principle of joint-cabinet responsibility would necessitate the fall of the Federal Executive, though the matter that brought about its fall would be one that exclusively concerned British India. If, on the other hand, the vote of no-confidence is moved in the Federal Legislature and the States representatives vote on it, the States will be placed in the invidious position of voting on matters in which they had no direct concern and possibly of helping to maintain in office a Home Minister who had lost the confidence of the representatives of British India in the Federal Legislature. Of the two alternatives the former is probably the least unacceptable to the States but both are open to objection. Is there no third course?

3. When such a radical change is contemplated in the polity of a country so diversely populated as India and so unversed through lack of previous experience and tradition in the running of a democratic constitution as India, it is of paramount importance to the success of any constitutional experiment that the new constitution should be simple and straightforward. Arrangements like those proposed in paragraph 2 above would be the reverse. But they are not the only alternatives. There are other ways of dealing with Central subjects which might on further examination be found to be less beset with difficulties than they are and which will have the dual advantage of co-ordinating action and of providing a safeguard against possible irresponsibility.

Take Law and Order. In the first few years it is possible that there may be times when the intervention of the Crown as represented by the Viceroy may be required for the maintenance of Law or the preservation of Order. The Viceroy cannot act without advice. Therefore if Law and Order is to be classed as a Central subject, he must be given either a Home Member not subject to the vote of the Federal Legislature (or of the British India representatives voting alone) or a Home Minister who would be so subject.

16<sup>o</sup> Novembris, 1933.]

CENTRAL SUBJECTS—

[Continued.]

MEMORANDUM BY SIR AKBAR HYDARI.

What are the implications of the first proposal? They are that in times of emergency when the popular mind all over India (for it would have to be a question transcending provincial boundaries to justify the Viceroy's interference) is troubled, the Viceroy would be compelled to give directions to popularly elected and responsible Provincial Ministers on the advice of an official at headquarters not in close touch with the currents of provincial feeling and not owing his position to popular selection. There would immediately arise a demand that he should give place to a Minister responsible to the Legislature. This would be a demand which could not for long be resisted so that in a short space of time the safeguard that an irremovable Home Member would supply would disappear.

4. If on the other hand, there is, as some desire, a Home Minister responsible to the Central Legislature, the Crown as represented by the Viceroy will have to abide by his advice or face the resignation of the Federal Ministry. The powers of the Crown will in so far be restricted in the exercise of its supervisory functions. Such a Home Minister will advise the Viceroy in accordance with the dictates of the dominant party in the Legislature. It is precisely against such dictates when actuated by communalism, racialism or demagogism, that it is desirable in the initial stages of the constitution to have safeguards. The experience of the Montagu-Chelmsford Reforms shows that Provincial Legislatures are more accurate mirrors of popular feeling than the Central Legislature. The former are nearer realities than the latter. In the maintenance of Law and the preservation of Order the Provincial ministers of the Interior are the appropriate advisers of the Viceroy.

5. Since the inception of the Montagu-Chelmsford Reforms political history in India provides any number of instances of the resentment caused in provinces, which are as yet only partially autonomous, to any direction from the Central Government, so that even now the Government of India have to proceed by way of consultation and not by way of dictation. In the circumstances why have in the new constitution a Home Member or Minister at all? Granted that the Viceroy must act on advice. Let him do so on the advice of Provincial Ministers of the Interior. Times of emergency are not by their very nature of frequent occurrence and with the increasing facility of communications and rapidity of travel it would not be difficult for a Viceroy to obtain within probably 24 hours all the advice he needs. The Viceroy has at present a Secretariat of his own apart from the Government of India Secretariat. It could possibly be slightly enlarged to cope with the increase of work.

From what has been said above it would appear that no lack of coordination or loss of strength will result if Law and Order is not classed as a Central subject. On the contrary, the Viceroy would in any action he might desire to take be fortified by the advice of responsible Ministers of the Provinces most affected and having taken a decision could implement it with all the authority which, apart from his position as the King's representative, he would in the final resort have as head of the Army. In this manner also a contentious subject and one which might cause an endless amount of friction would be removed from the purview of Federal politics. Law and Order, if centrally administered, would be bound to have an influence and not a happy one on Federal politics.

6. Then there are technical subjects like the Railways which may be Federal as regards policy but need be neither Central nor Provincial in regard to administration. The administration of Railways might be left



16<sup>th</sup> Novembris, 1933.]

CENTRAL SUBJECTS—

[Continued.]

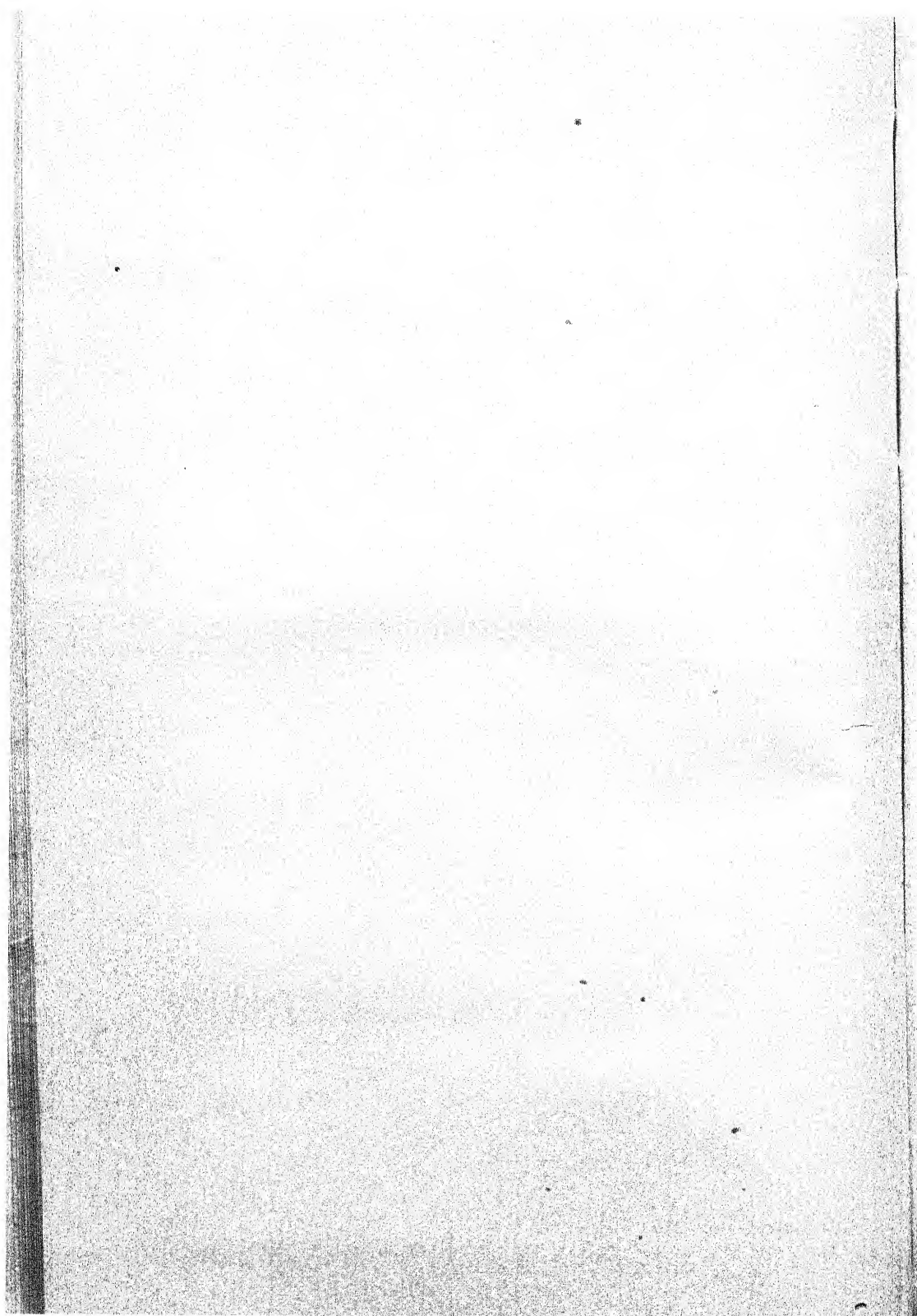
MEMORANDUM BY SIR AKBAR HYDARI.

to a Statutory Body representative of the interests concerned which would function undisturbed by the interplay of party politics and unassailed by provincial jealousies because it would be representative of all interests. Similarly other subjects might be left to *ad hoc* bodies representative of the various interests concerned and constituted by Statute. In the domain of Agricultural Research this experiment has been tried and has worked with increasing success so far. Since Agriculture was made a Transferred subject under the Montagu-Chelmsford Constitution provinces went their own way in the matter of agricultural development. The results were so discouraging that it led the Royal Commission on Agriculture to recommend the formation of an Imperial Council of Agricultural Research. It has on it representatives of the Central Government of the Provinces and of such of the Indian States as wish to join. It has the management of large sums of money voted in lump by the Indian Legislature. This money in turn finds its way in the shape of grants to Provincial Departments of Agriculture and some of it also to Indian Universities. Being in a position to spend money and representative as it is of all provinces the Council is gradually beginning to direct agricultural development all over India. This is being achieved by the very nature of its constitution without any friction. Something similar could be done in the case of Railways and in that of other technical departments where there was need for co-ordination of effort.

7. The above lines of possible advancement seem worthy of closer study. *Prima facie* these proposals while providing ample safeguards against action whether arising from emotion or fear or racial or communal discrimination would offend less against the self-respect of a self-governing India, operating as they would by way of consultation and not as injunctions of some central authority (the Home Member or Minister), than if there were a number of Central subjects with safeguards whose object, viz., as a curb on irresponsibility, would be scarcely veiled. They also provide against centrifugal tendencies because the more opportunities there are for the various interests, provincial, communal or racial, to take counsel and act together the less likelihood will there be of such interests falling apart. The concentration of power in a Central Executive need not necessarily lead to unity. It might very possibly lead to disruption. Unity is achieved not by the forms of a constitution however nicely balanced and adjusted but by the realisation by different interests that the way to progress and safety lies in common action tempered by a spirit of compromise. And this in a country at present so diversely constituted as India can, it is submitted, best be achieved by providing as many opportunities as possible for the different interests to come together without always relating their meetings to current politics.

A. HYDARI.

28th May, 1931.



## RECORD X—(contd.)

### 1c. Memorandum by Sir Akbar Hydari on the Size and Composition of the Federal Legislature

1. For the Committee's purposes it seems to me fruitless to go over the history of the struggle between those who, like myself, were in favour of a unicameral Federal Legislature or, if a bicameral Legislature was desired, of a small bicameral Legislature, and those whose views found favour with the Lothian Committee. Nor do I think it profitable to elaborate my conviction that, before the Lothian Committee came to conclusions in regard to the strength of the Federal Legislature so far as British India was concerned, which inevitably affected the size of the Federal Legislature as a whole and materially altered the proportion of the strength of its two houses from 2:3 to 2:4½, the Committee should have called the representatives of the States, who were the other party concerned, into consultation. Let us start with the problem as the White Paper in this regard presents.

2. Two reasons have contributed to the large numbers proposed in the White Paper for the Federal Legislature. One is the desire to establish effective contact between the electors and the elected. The other is to meet as far as possible the claims of the Chamber of Princes—and I would like to point out that the Chamber of Princes does not represent all the Princes of India—to individuality of representation in the Upper House of the Federal Legislature.

These two reasons have been responsible for a progressive increase in the proposed size of the two Houses of the Federal Legislature from that suggested at the First Round Table Conference to that proposed in the White Paper via the compromise effected at the Second Round Table Conference, but broken by the Lothian Committee in their Report.

3. The White Paper proposals do not, in my view, satisfy either of the two considerations on which large Federal Houses have been sought to be justified. "If responsible government," wrote the Lothian Committee, "is to develop properly, the Federal system must make it possible for the candidate and member to get and keep in touch with the constituents, and we think that from this point of view an increase in the British Indian seats to 300 is necessary." (Paragraph 405 Franchise Committee Report.)

Now under the Lothian Committee's proposals, if separate electorates are maintained, as they will be, for Moslems and Sikhs and if account is taken of the town constituencies, the seats allotted to women, labour, and special interests, the constituencies under their proposals, while varying greatly in size, will, in the country districts, average between 5,000 and 10,000 square miles. I would in this connection invite the Committee's attention to paragraphs 243 and 244 of Volume I of the Report of the Simon Commission. I concede that one cannot draw an exact parallel between English and Indian conditions; but the very respects in which the parallel fails are those which strengthen my argument. Our people are not so literate as the people of England; our communications are not so extensive as those in England. The means at the disposal of candidates to get into touch with the electorate are neither so numerous nor so effective as are the means at the disposal of the English Parliamentary candidate.\*

\* It has been suggested that the development of broadcasting, now in its infancy in India, will provide an effective means of contact between the candidate and the electorate. The candidate will doubtless in that event be able to speak to large sections of his electorate, but not *vice versa*. There will thus not be that effective contact which is possible only when the candidate and electors meet face to face.

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And yet the constituencies which the Lothian Committee propose for British India are far more extensive than any which obtain in these Islands.

In so far as the proposals in the White Paper have reduced the numbers recommended, to that extent has the size of the constituencies been still further enlarged. If the object of establishing direct contact with the constituencies is to be achieved, a Legislature of far greater size than either that proposed by the Lothian Committee or in the White Paper is required. We are therefore driven to the conclusion that the problem of the size of the Federal Legislature must be approached from an entirely different angle so far as British India is concerned.

4. The other consideration which led the framers of the White Paper to suggest the numbers they have proposed was the desire to meet as far as possible the claims of Indian States to individuality of representation. It is interesting to look at the history of this demand. The Committee of Ministers presided over by me and having as its members Sir Mirza Ismail (Mysore), Sir V. T. Krishnama Chari (Baroda), Sir Manubhai Mehta (Bikanir), Sir Prabhashankar Pattani (Bhavnagar), Sir K. N. Haksar (Chamber of Princes Special Organisation), and Mr. K. C. Neogi (Oriya States), set up by the Princes in 1930 before they made their declaration for Federation, decided upon a unicameral Federal Legislature. There was also a considerable body of States' opinion which was in favour of Confederation and for a small Upper House if the Legislature was to be bicameral. Later, the medium States urged that in the Federal Legislature the Indian States should have equality of representation in the Upper House with British India, or in other words a 50-50 representation; and so far as the States *inter se* were concerned, they demanded equality and individuality of representation. The larger States agreed with British India that this demand on the part of the States was excessive and ultimately all the States agreed that they should have 40 per cent. representation in the Upper House and 33½ per cent. in the Lower House. Even then the medium States tried for equality of representation among all the States *inter se*, and when they failed they insisted upon at least individuality of representation. They have pressed this demand at the expense of the larger States, with the result that if their demands are met the larger States will obtain a representation in either House which it would be unfair to ask them to accept.

5. I would point out that representation in the Federal Legislature is demanded by the medium States individually and not collectively as representing particular areas or particular forms of polity. The Federal Legislature is, however, not meant to be an ornamental Assembly where salutes and precedence should predominantly affect the interests of the people, interests which will be determined by the decisions of this Legislature. Any undue weightage, therefore, given to a State beyond what it is entitled to by virtue of its population, area, and above all the federal content which it brings to the Federal pool, cannot be justified on any ground of public policy or political ethics. While, on the one hand, the States have claimed and have been given weightage *vis-à-vis* British India, it is not fair to ask the larger States, on the other hand, to accept a representation less even than what they would be entitled to if there had been no weightage for the States and they had been treated exactly as British Indian Provinces. Even the numbers which the White Paper allots to the States, viz., 104 out of an Upper House of 260, and 125 out of a Lower House of 375, cannot give absolute individuality of representation; but even this approach to individuality of representation for the smaller States can only be obtained at the expense of the larger States and by treating them



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worse than British Indian units of corresponding size, population and resources.

6. The demand of the larger States is not that each should get a large number of seats, absolutely speaking, but that each of them should not get a disproportionate number of seats; disproportionate when their quota is compared to what is given to British Indian units of corresponding size, population and resources, and much more disproportionate when they are compared in respect of these factors with the medium and smaller States.

7. I suggest to the Committee that it is desirable to bear in mind certain facts and figures in order to guard against the danger of thinking of the States in terms of numbers. There are in all, according to an official publication entitled "The Indian States" (1929), no less than 560 States in India. Of these 119 are what are called Salute States and 441 non-Salute States. Of the latter:—

170 have an area of less than 10 square miles each;

169 have a revenue of less than £750 per annum;

160 have a population of less than 1,000.

But let us take even the 119 Salute States. There are only 13 of these with a population of 1 million and over and 12 with a revenue of £750,000 per annum and over. As against these there are 56 States with an area of less than 1,000 square miles each; 57 with a revenue of less than £75,000 per annum; and 47 with a population of less than 100,000.

The 13 States with a population of 1 million and over account for 57.38 per cent. of the total Indian States population; the remaining 106 out of the 119 Salute States have between them a population of less than 28 per cent. of the total Indian States population, the balance of 14.62 per cent. representing the population of 441 Non-Salute States.

Briefly speaking, excluding Gwalior—which is under a minority administration—the first ten States have more than 50 per cent. of the population and revenue of the whole. It is amongst these States that the strongest objection is found to the numbers in the White Paper or the allocation of seats proposed on the basis of these numbers. It is easy to get the majority of the States to accede to Federation if the medium and smaller States are given an amount of representation out of proportion to their population, area and federal content at the expense of the large States. If the Committee and Parliament are looking to the States to provide one of the elements of stability in the new Constitution, it is not to the numbers of States which accede to the Federation to which attention should be paid, but to the quality in terms of federal content which they bring, of the States which do.

8. I should like to place before the Committee the reasons for which I and those who think like me have urged a small Federal Legislature:—

(1) The Federal Legislature, unlike the Legislature of a Centralised State such as the present Government of India, will have a much more restricted sphere of activity than the present Indian Legislature has.

(2) The Federation, having to deal with what must be called technical subjects, like communications, commerce, and currency, will necessarily require in its members a high level of experience and knowledge. It is in the highest degree desirable that the Federal

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Legislature should represent provincial and State wisdom and experience in their best form.

The problems which will affect the Indian citizen in his everyday life will be dealt with very largely in the provincial legislatures, which under the White Paper proposals will have been considerably enlarged and made more democratic than they are at present. I would in this connection invite the Committee's attention to paragraphs 154 and 155 of Volume II of the Report of the Statutory Commission. The Commission are there envisaging a Central Legislature for British India only and full provincial autonomy; under Federation the powers of the Federal Legislature will be, if anything, still further restricted.

The attention of the Committee has been drawn to the large list of concurrent subjects, List III, Appendix VI of the White Paper; but if this list is examined it will be seen that, in the field of civil and criminal law, codes of law are already in existence, so that it is unlikely that their amendment will keep the Federal Legislature very active. It should be remembered that Law and Order will in future be a provincial subject and legislation pertaining to it will more appropriately have to be undertaken in the Provinces. This applies to some extent to social legislation also, which must have its roots in provincial necessity, later to be translated into a practicable measure of uniformity by Federal legislation. The concurrent field exists for securing uniformity of laws; but by far the greater and the most important field of original legislation will, under provincial autonomy, remain with the Provinces.

(3) It is obvious that a large legislature (there will be 635 legislators in Delhi under the White Paper proposals) will cost more than a small one, but more important even than this consideration is the need for economy in personnel. India is not in a position at present adequately to man eight or nine provincial legislatures—some of them bicameral—plus a Federal Legislature of the size contemplated in the White Paper, that is, 635 more.

Economy in personnel is an even more important factor so far as Indian States are concerned than it is in British India. In their present stage of development anyone who knows Indian States would probably agree that they will find it extremely difficult to spare from the work of their own Administrations as many as 104 suitable representatives for the Upper and 125 for the Lower House.

9. I stress the word "suitable." If the British Parliament is looking to the Princes to provide an element of stability in the new Constitution the sort of representatives which they will be able to send—if their number is as large as that proposed in the White Paper—will in my opinion not achieve that purpose. Furthermore, such representatives will not in most cases be able to speak with the authority and weight—if any of them, however able, happen to have as their constituencies small States with perhaps one vote out of 100 State votes—that they would have if they spoke for a group of States representing one vote out of 24 or even 40 State votes.

The time has come for decision and I would beg the Committee to look upon the question of the size and composition of the Federal Legislature, not merely as one of the questions among many with which the Committee has to deal in deciding upon the Federal structure, but as the most important factor which will govern, in my opinion, the success or otherwise of the Federal scheme.

16<sup>o</sup> *Novembris*, 1933.]

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[Continued.]

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Great care is being taken in designing safeguards and seeing that they are adequate. I consider that a small, efficient and responsible Federal Legislature to be a great and fundamental institutional safeguard, and it is for this reason that I attach the greatest possible importance to its proper constitution.

10. I propose therefore that for the Federal Legislature the indirect should be substituted for the direct system of election. The direct must lead to an unmanageable and expensive Legislature and yet in the rural constituencies of British India not ensure that direct contact between the candidate and the electorate which is one of its main justifications.

Indirect election will not mean a denial of the democratic principle. It will only mean its adaptation to the problem which the vast size and population of British India provides.

I would invite a perusal of paragraph 137 of Volume II of the Report of the Simon Commission, which is a masterly summing up of the question of the constitution of this Legislature. "Representative institutions," say the Simon Commission, "were devised as a means of getting over the difficulty created by the expanding size of States, and it appears to us to be in strict accordance, both with the theory of representation and with the requirements of commonsense, to say that, when the total area to be provided for is so huge that direct election would involve either impossibly large constituencies or an impossibly numerous Assembly, the solution is to be found through 'Election by the Elected'—which is all that indirect election means."

I suggest that the Lower House should be elected by the provincial legislatures, which themselves, under the scheme of the White Paper, will be elected by direct election and on a wide franchise. In paragraph 138 (Volume II) of their Report, the Simon Commission say: "If the Central Government of British India is to develop on Federal lines the adoption of a method which will represent the Provinces as such at the Centre is extremely desirable." I commend the paragraph as a whole to the consideration of the Committee.

11. The Upper House should consist, in my view, of the nominees of the States and of Provincial Governments. Everywhere we are confronted with the necessity of bringing the Governments of the Units into liaison with that of the Federation.

12. For the time being I would start with a Lower House of 150 and an Upper House of 60, which is about the strength of the present Legislative Assembly and the Council of State. In place of the present nominated official and non-official bloc I would substitute the representatives of the Princes, which would give them 50 seats in the Lower and 24 seats in the Upper House.

This would leave the structure of the White Paper scheme with regard to the relative powers of the two Houses undisturbed except to the small extent of reducing the Indian States quota in a joint session from 36 to 34 per cent., a result which British India at any rate would welcome and one to which the Indian States, on their side, would probably not object in view of the greater suitability of the mode of election to the Lower House from their point of view.

There is another alternative. If you do not wish to disturb even to this extent the scheme in the White Paper, the strength of the Lower House might be kept, as at present, at 150—that is, 100 elected from British India



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as at present, and 50 nominated by the Indian States in the place of the nominated official and non-official bloc. The Upper House could be of 100, giving to British India its present number of 60 and adding 40 seats for the Indian States. In this manner you would leave the structure of the White Paper in regard to the two Houses entirely unaffected.

The proposals which I have made regarding the method of election to the Lower House have been criticised by those who favour the White Paper proposals in respect of the size of the Legislature, on two grounds: that as the electorate for each provincial quota for the Federal Lower House will be very small there will inevitably be corruption; and secondly, that if any members for the Federal Legislature are to be selected from the members of the provincial legislatures there will be a crop of bye-elections at the inception of each new provincial legislature. The critics forget that this method of election is proposed in the White Paper for the Upper House of the Federal Legislature, to which British India will send as many as 156 members, while under my proposals the numbers sent to the two Houses from British India will not exceed this number, and the objections in question will apply equally to the White Paper proposals for the constitution of one House alone.

13. It has been assumed in recent discussions that the practicable alternatives are only two—namely, a Federal Legislature of the size contemplated and composed in the manner suggested in the White Paper, and a small Upper House of 60 and a Lower House of 150, the one nominated by the Governments of the Units and the other elected by provincial legislatures. And it has been suggested to the Committee that if Parliament adopts the latter alternative it will be a retrograde step and will be throwing away the fruits of discussions of the Round Table Conferences.

I will take the second point first. The compromise arrived at on this subject at the Round Table Conferences was an Upper House of 200 and a Lower House of 300. By recommending numbers beyond these the Lothian Committee imperilled and the White Paper proposals broke the compromise thus arrived at. Those therefore who support these proposals cannot appeal to the Committee on the ground that by accepting some alternative proposals the Committee and Parliament might lay themselves open to the charge of upsetting a compromise laboriously arrived at.

As for the first reason: is not the Committee being asked to pay homage to catchwords and not to what is required by the facts of the Indian situation? Even a highly responsible British Indian leader has admitted that if the Federal Legislature were to be unicameral—and I for one would welcome and always have welcomed a unicameral legislature and consider such a Federal Legislature to be quite feasible\*—he would not object, given such a

\* *Vide* paras. 147, 148 of Volume II of the Report of the Simon Commission. Such a Legislature would have all the elements of stability together in one House without creating the risk of a clash between two Houses, one supposed to be Popular and the other Conservative. It would also give a larger number of seats for distribution among the Indian States which at present have to be duplicated in the two Houses for the same State Units. If considered necessary, there might, in addition to this unicameral Legislature, be a small Council of Greater India representing the Governments of about thirty members constituted as in para. 236 of the Simon Report (Vol. II).



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legislature, to indirect election. Therefore, even according to a distinguished spokesman of British India, election by the mere fact of its being indirect is not necessarily a retrograde step.

If British India, or rather large sections of British India, are anxious for direct election and are not bothered by the manifold disadvantages and dangers of huge constituencies, extensive in area and excessive in population, they are welcome to have direct election to either or both houses of the Federal Legislature. To my way of thinking direct election is not necessarily advance, nor indirect retrogression, but if store is set on the fact that British India has "enjoyed" direct election for the past few years and wishes the principle to be retained, let that be conceded; but for the present only to the extent to which direct election has so far been enjoyed. It should not be extended to a point after which reconsideration in the light of experience of the question of direct versus indirect election for the Federal Legislature has been made impossible. What I am most anxious about is that the numbers of the Federal Legislature should be small, at any rate to start with. The present Central Legislature is partly nominated and partly directly elected and its total strength is 210. There is no need to increase it at one step from 210 to 635.

14. Those of us who have pleaded for a stable Legislature at the Centre have compromised and yet again compromised since the beginning through successive Round Table Conferences. We have given up the idea of a unicameral Legislature; we are prepared to give up the idea of an indirect system of election to the Federal Legislature. But we are entitled to say that we will go thus far and no further, and not be made to give way on the point of numbers—not out of any *parti pris* on our part, but because we consider that if the size of the Federal Legislature is also held to be of no account the last hope of stability in that Legislature will vanish.

It is proposed greatly to increase the strength of the provincial legislatures. This will already be a substantial tax on the political talent available in India in her present stage of development. In her own interests it is desirable to hasten slowly so far as the Federal Legislature is concerned.

Later, there may be a demand for increasing the numbers after all parties have had experience of the working of the new institutions; or, perhaps, there will be no such demand and the federating units may come to be grateful for not having been saddled with the expense and inconveniences and dangers of having 635 people in Delhi for the small number of special subjects which will come within the purview of the Federal Legislature.

15. Do not start with the maximum figures, but leave some room for development.

Responsibility in the Federal Centre is necessary and essential, but the Legislature to which this responsibility is given should be of a suitable character.

So far as the States are concerned, there will be for a Legislature so constituted the ready acquiescence of the larger States, who will in that case not only give the lead for entering Federation, but will also set in motion the forces for grouping other States into units more equal in size and area and federal content to the other States.

The Committee is aware of the need for such grouping in matters relating to the proper administration of Federal subjects; such, for example, as the

16<sup>th</sup> Novembris, 1933.]

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proper administration of Federal laws which will devolve upon the Courts of the Units.

In such a case with a Legislature as stable, even if to start with a majority of the Indian States do not join Federation—though I personally think that States representing a majority of the Indian States population area and revenue would join—there need be no fear of granting responsibility in the Centre and thus meeting the insistent demand of British India.

A. HYDARI.

November, 1933.

## RECORD X—(contd.)

### 1D. Railways under the Federal Constitution. Proposals of the State of Hyderabad submitted by Sir Akbar Hydari

1. The following paragraphs are based upon the assumption which seems inherent in the conception of Federation, that the jurisdiction now possessed by the British Government over the lands occupied by or for the purposes of the Nizam's railways and the other railways in Hyderabad shall be retroceded to the State.

2. The State would desire that as regards the administration and management of its railways the railway authority appointed by the State should occupy a similar and parallel position and status to those laid down for the Railway Authority under the "Sketch Proposals for the Future Administration of the Indian Railways"; that is to say, as regards matters within the jurisdiction of the Federation affecting the State's railways the Federation would have the same rights and powers in relation to the State's railway authority as in relation to the British Indian Railway Authority.

3. A constitutional guarantee should be provided against unfair discrimination between the State's railways and any other railways by or under legislative or administrative act of the Federation.

4. The State's railways should be afforded a constitutional guarantee of all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by any other railway administration and for the return of rolling stock; such reasonable facilities to include the due and reasonable receiving, forwarding, and delivering of through traffic by through bookings and at through rates. The amount of any through rate and its apportionment between the State's railways and the railways of the administration or administrations concerned, in case of dispute, to be determined by a tribunal.

5. The State's railways should be afforded a constitutional guarantee that they and their traffic will not be subjected by another railway administration to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and so that whenever for the same or similar traffic, or for the same or similar services, a railway administration charges lower rates in one case than in another the burden of proving that such lower rate does not amount to an undue or unreasonable prejudice or disadvantage shall lie on the railway administration.

6. The State's railways should be given a constitutional guarantee against unfair competition. For this purpose the State's railways should be enabled to bring before a tribunal any rate or charge made by another railway administration in competition with the State's railways which (a) places the State's railway at an undue or unfair disadvantage in the competition; or (b) is inadequate having regard to the cost of affording the service or services in respect of which the rate or charge is made; and unless the tribunal is satisfied, in either of the foregoing cases, that the action of the railway administration in making the rate or charge is desirable in the public interest (including the interests of the competing railways) the tribunal shall cancel or vary the rate or charge.

16<sup>th</sup> Novembris, 1933.]

HYDERABAD—RAILWAYS—

[Continued.]

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7. The foregoing guarantees could not be made effective in practice without the ancillary right on the part of the State's railways to require information from other railway administrations not merely as to the charges that are being made by the latter but also as to the proportions of any such charge attributable to (a) carriage of the goods on the railway, (b) terminals, (c) demurrage, (d) collection, delivery and other expenses.

8. It is obvious that the guarantees referred to above involve the necessity for a tribunal to interpret and give effect to them. The State is advised that having regard to experience of English railway legislation the most satisfactory system would be to set up a single permanent judicial body to deal with disputes arising under the foregoing guarantees. Moreover, it may well be that traders will, as respects undue preference and facilities, be given, either in the Constitution Act or at a later stage, similar rights, and as in that case similar questions are likely to arise as between traders and railway administrations, it would be most desirable, in order to avoid inconsistent and overlapping decisions, that the same tribunal should adjudicate upon all such questions whether arising between one railway and another or between a trader and a railway.

9. Construction of Railways in British India is a Federal subject under Appendix VI., List I., Head 12 (a), whereas construction by a State within its own territory remains outside the Federal sphere.

In order to prevent friction in matters relating to construction the State suggests that constitutional provision should be made whereby all railway construction whether in British India or in a State shall be regulated with due regard to (a) progressive extension of the Indian Railway System; (b) co-ordination of that system as a whole; and (c) the avoidance of unfair encroachment by one railway administration upon the area served by another.

In order to give effect to such a provision it would seem desirable that every scheme of railway construction should be brought before an impartial body whose duty it would be to hear objections to the scheme in the same way as would be done by a Private Bill Committee in this country. The State sees no reason why this function should not be entrusted to the tribunal contemplated.

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## RECORD X—(contd.)

### 2. Note on Federal Finance by Sir Manubhai Mehta

Under this important head the Princes, by their resolutions at the informal meetings of the Princes' Chamber, have asked that: "no direct tax or levy of any kind, including income tax and corporation tax, shall be imposed by the Federal Government with the States or on the subjects of States. Federal sources of revenue shall be strictly confined to those mutually agreed upon and mentioned in Appendix A, and no addition to this list will be permissible without the free consent of each State."

This demand has important bearings on paragraphs 138, 139, 141 and 142 of the White Paper dealing with the chapter on the allocation of revenues. The scheme of the White Paper provides that the Federal Government may for the first ten years retain all the proceeds of income tax for its own expenditure without allowing any contribution from income tax revenue to the Provinces. The income tax revenues would be assigned to the Governor's Provinces, but would be payable only after ten years, the assignment to the Provinces during those first ten years being regulated on a gradually increasing scale limited to a maximum of 75 per cent. and a minimum of 50 per cent., spread over the first ten years. Taxes levied on official emoluments of Federal officers and taxes on income earned in Chief Commissioners' Provinces and other Federal areas will naturally remain with the Federal Government, but all other revenues from income tax will be liable at the end of ten years to revert to the Governors' Provinces under the above arrangements.

Paragraph 141 gives to the Federal Legislature power to impose surcharges on taxes on income for Federal purposes. While such surcharges are in operation, each State member of the Federation will contribute to the Federal revenues a sum to be assessed on a prescribed basis. If any State has agreed to accept Federal legislation regarding income tax, its contribution to the Federal revenues under the contingency of surcharges mentioned above may take the form of a corporation tax or a tax on the undistributed profits of companies.

These provisions of the White Paper are not quite acceptable to all the Indian States. Of course, such States as choose to make their contribution in the shape of corporation tax will be free to do so, but as a matter of principle the Indian States generally ask for exemption from any form of direct taxation.

If any contribution is called for from the whole of India during any emergency, the Indian States desire that their contribution ought to be left entirely on a voluntary basis and not made compulsory. If a surcharge is required on account of any expenditure called for by war, the Indian Princes demand that under their treaties they are entitled to free protection from the Paramount Power, and it would scarcely be right or in accordance with their treaties to insist upon obligatory contributions from the States in case of war.

In the case of any other crisis, what the Princes ask for is that resort to surcharges and contributions from States may be sought only as a dernier resort and only after exhausting all the other ways and means of meeting the emergency. In the first place, every endeavour ought to be made for curtailing the ordinary expenditure of Government; perhaps the expenditure of the Military Department may have left room for curtailment if carefully explored. And if after such exploration it is conclusively proved that fresh

16<sup>o</sup> Novembris, 1933.] NOTE ON FEDERAL FINANCE  
BY SIR MANUBHAI MEHTA.

[Continued.]

sources of raising revenue are absolutely necessary, the Princes desire that all the sources of indirect taxation must first be exhausted. The present duties on imports may be raised; if it is not possible to increase the duties without setting in motion the law of diminishing returns and thus reducing the very revenues it is sought to increase, the Princes suggest that fresh excise duties may be levied on products of new indigenous industries sought to be protected, like excise on matches, excise on tobacco, new monopolies, manufacture of arms and explosives, etc.

Even when all these ways and means are found inadequate and more funds are needed to cope with an emergency of a specially grave character, it may be safely left to the Indian Princes to come to the relief of the Federal Government of their own free choice rather than out of compulsion, as they have done during the past, during the time of the Great War and other grave emergencies, but they object to compulsory contribution or any form of direct taxation.

MANUBHAI N. MEHTA.

4th November, 1933.

## APPENDIX.

### FEDERAL SOURCES OF REVENUE.

1. Federal sources of revenue shall, subject to the rights of States, be strictly confined to the following:—

(a) Maritime Customs;

(b) Salt;

(c) Export Opium;

(d) Excise duty on articles levied in 1931 in addition to Customs duties; subject to the rights of the maritime States when such excise takes the form of countervailing duty;

(e) Receipts from federal commercial undertakings, e.g., federal railways, federal posts and telegraphs;

(f) Profits from federal currency;

(g) Cash payments and payments through ceded territories provided that "g" shall be treated as a vanishing item, relief being given to the States as quickly as possible.

2. Should the revenue yielded by the sources set forth above not suffice for the expenses of the Federal Government, the Government should, subject to the proviso in (g) make up the deficit by:—

(i) manipulating the aforesaid sources of revenue so as to yield higher revenues;

(ii) by all possible economies;

(iii) by devising other forms of indirect taxes; and

(iv) by utilising if and when necessary the following reserve sources of revenue, namely, excise duties on any of the following articles:

(a) matches;

(b) tobacco.

N.B.—The above scheme is subject to:—

(1) The rights of the individual State under treaties, and agreements, provided that no maritime State shall levy Customs duties lower than those of British India.

(2) The conditions that pending disputes between individual States and the Government of India are immediately settled.

3. Where these proposed excise duties impinge on existing taxes in individual States, adjustment will have to be made with them.

## RECORD X—(contd.)

### 2A. Memorandum on Constituent Powers by Sir Manubhai Mehta.

1. Provision for ultimate transfer of reserved departments at the end of a period of transition.

The Princes do not approve of the mixing up of these subjects, like Army and Defence as well as Foreign Relations, with other Federal subjects in List No. 1. Under Appendix VI attached to the White Paper, which purports to enumerate the subjects the Princes will be expected to agree to federalise, the subjects of Defence and Army, as well as Foreign Relations, according to the opinion of the Indian Princes, ought to be classified as Crown subjects to be listed separately from subjects which are purely Federal, and though they understand that the subject of Army is one reserved though Federal, in contradistinction to Provincial subjects, the subjects of Army and Foreign Relations cannot, at this stage, be regarded as under the control of the Federal Government. The relations of the Princes with regard to Army and Defence are with the Crown and come under the sphere of paramountcy. The Princes therefore feel that when any period is provided for the ultimate transfer of the Reserved departments to the Federal Government, that they ought to be consulted before any such transfer takes place. By their treaties, they are entitled to look up to the Crown for protection against foreign aggression as well as internal commotion, and no transfer of these obligations from the Crown to the Federal Government can take place unless with their previous consent. The Princes feel that their Treaties of Accession ought to preserve this power of revision as all such treaties must be bilateral in character, and the Paramount Power can be released from its obligations only with the assent of the Princes.

2. The proposal that there should be some provision for the transfer of subjects from the Federal Government to the units and vice versa.

The Princes do not agree to this. They consider that no transfer of subjects from the Provincial list to the Federal list, or from the Central Indian list to the Federal list, ought to be allowed without their specific consent, and such a power of constitutional amendment ought not to be within the purview of the authority of the Indian Federal Legislature. If any such fundamental constitutional amendment is proposed, it could only be done by a fresh Act of Parliament, and before such an Act was passed by the Parliament the assent of the Princes should be taken, as such changes would affect their Accession Treaties. The Princes should be free to agree to such revision in their treaties adding to their Federal obligations.

3. Constitutional changes.

No amendment in the financial arrangements affecting the Indian States ought to be possible unless their previous assent was secured. The Princes attach great importance to their exemption from any kind of direct taxation proposed by the Federal Legislature. If any amendment seeks any change in this financial arrangement, their assent must be first taken and such a constitutional amendment should only be possible by a fresh Act of Parliament.

Similarly the Constitution ought to leave no room for any change in the strength and composition of the Federal Legislature. The agreement of the Princes will first be secured to the numbers of the seats they would be assigned in the Federal Legislature, and no decrease in this number nor any change in the mode of their selection ought to be left within the competence of the Indian Federal Legislature. Such a fundamental change ought to

16<sup>o</sup> Novembris, 1933.]

MEMORANDUM—

[Continued.]

CONSTITUENT POWERS BY SIR MANUBHAI MEHTA.

require a fresh Act of Parliament, and such a new enactment could only be undertaken with the assent of the Princes.

Amongst the safeguards that were communicated to the Lord Chancellor at the third Round Table Conference by the representatives of the Indian Princes it was requested that:—

“Any amendment of the Constitution shall—

“(a) for the purpose of its introduction in the House require in the first instance a two-thirds majority of the House in which it is being introduced, and will only become Law after

“(b) separate ratification and acceptance by three-fourths of the Indian States represented in the Federal Legislature and by three-fourths of the members representing British India, provided that no alteration affecting the Indian States in the following matters shall be deemed valid without the consent of the State concerned.

- (1) Sovereign autonomy of the State.
- (2) Representation allotted to any State in the Upper House.
- (3) Minimum representation of any State in the Lower House.
- (4) The alteration of the territorial limits of the State.
- (5) Additions to the list of Federal subjects.

“The statutory and constitutional guarantees provided for shall be unalterable except with the consent of each federating State.”

Taking this communication in relation with what they have said in the present note, the gist of their demands amounts to the following:—

Amendments in the Constitution may be of two kinds.

(1) They may be very informal changes of a routine character, not impinging upon the rights or obligations of any units. Such amendments ought to be possible without much difficulty and they may be carried by a simple majority of votes in the Legislature.

(2) But where amendments were fundamental and involved vital changes in the Constitution, especially when confined to the five matters noted above, their passage through the Indian Legislature ought to be hedged round by such safeguards as sought for under the devices of absolute majority or other specified two-thirds or three-fourths majority in a joint session of both Houses.

And even after the passing of such an amendment in the Indian Legislature, the Constitutional amendment could only be ultimately ratified by a fresh Act of the British Parliament, for which again the assent of the Indian States acceding to the Federation for such revision of their Accession Treaties ought to be first secured.

This practically is embraced by what the Princes have meant by their demand for freedom to secede.

MANUBHAI N. MEHTA.

November 4th, 1933.



## RECORD X—(contd.)

### 3. Joint Memorandum submitted by the British Indian Delegation to the Joint Committee on Indian Constitutional Reform

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## PART I.

### INTRODUCTION.

1. The Memorandum in which we submit our views on the various issues raised by the White Paper scheme has been prepared in two sections. In the first section we have stated the principal modifications that should in our opinion be made in the scheme in order to satisfy moderate public opinion in India and have indicated very briefly the reasons justifying them. In the second section we have attempted to answer the chief criticisms directed against the basic principles of the White Paper proposals.

We have throughout kept in view the declaration of policy made by the Prime Minister at the end of the first Round Table Conference on behalf of the last Labour Government and endorsed by the present National Government and the present Parliament. The salient sentences of that declaration are as follows:—

“The view of His Majesty’s Government is that responsibility for the government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights.

“In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty’s Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government.”

It is in the light of this declaration of policy that we have examined the White Paper proposals. The modifications we suggest do not affect the basic structure of the scheme. They are intended to ensure that the reserved powers are so framed and exercised as not “to prejudice the advance of India to full responsibility”, and to secure that the period of transition is not indefinitely extended.

### *Preamble to the Act.*

2. We consider that the preamble to the Constitution Act should contain a definite statement that the “natural issue of India’s constitutional progress is the attainment of Dominion Status”. This declaration, as Lord Irwin explained in the announcement he made on behalf of His Majesty’s Government on October 31, 1929, is in accordance with previous public declarations of Ministers of the Crown and also with the directions given in the Instrument of Instructions by His Majesty the King “that it is His will and pleasure that the plan laid down by Parliament in 1919 should be the means by which British India may attain its due place among His dominions.” That the expression “Dominion Status” was not used in a ceremonial or honorific sense is clear from the following extract from the message conveyed to India by His Majesty the King-Emperor, through H.R.H. the Duke of Connaught, on the solemn occasion of the inauguration of the new Central Legislatures in 1921:—

“For years, it may be for generations, patriotic and loyal Indians have dreamed of *Swaraj* for their Motherland. To-day you have beginnings of *Swaraj* within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy.”

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16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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[Continued.]

Indian public opinion has been profoundly disturbed by the attempts made during the last two or three years to qualify the repeated pledges given by responsible Ministers on behalf of His Majesty's Government. Since it is apparently contended that only a definite statement in an Act of Parliament would be binding on future Parliaments, and that even the solemn declaration made by His Majesty the King-Emperor on a formal occasion is not authoritative, we feel that a declaration in the preamble is essential in order to remove present grave misgivings and avoid future misunderstandings.

*Date and conditions for the inauguration of the Federation.*

3. We consider that, following the precedent of some of the Dominion Constitutions, a definite date after the passing of the Act should be fixed by the Constitution Act for the inauguration of the Federation. We have been assured that no serious difficulty is now anticipated in the way of an early establishment of the Reserve Bank, and we have also been authoritatively informed by the witnesses who appeared on behalf of the Princes' Chamber that a period of one year would be sufficient for the negotiations in connection with the Treaties of Accession. If it is feared that unforeseen difficulties might delay the inauguration of the Federation, power might be given to His Majesty's Government to postpone the date by means of a Royal Proclamation.

In making this suggestion we have in view the psychological effect of such a provision on the political parties in India. The uncertainty that must necessarily result from the absence of any definite date in the Constitution Act for the inauguration of the Federation and the possibility of further delay arising from the procedure of an address in both Houses for the issue of a Proclamation would seriously prejudice the formation or realignment of political parties in India. On the other hand, we have reason to suppose that if a definite date were fixed, even the parties which are dissatisfied with the White Paper Constitution would probably cease to carry on an agitation on the present lines and would be encouraged to concentrate their attention on the new elections. We attach very great importance to this development, since the satisfactory working of the new scheme must necessarily depend on the existence of well-organised parties, prepared to work the scheme.

*The Reserved Subjects.*

*The Army.*

4. We have accepted the necessity for the reservation, during a period of transition, of Defence, Foreign Affairs, and the Ecclesiastical Department. We regret to note, however, that in spite of the insistent demands of the Indian Delegates at the Round Table Conference for greater control over Army administration and the promise contained in the Prime Minister's declaration that the reserved powers will not be so framed and exercised as to prejudice the advance of India to full responsibility, the White Paper provisions relating to the Army, so far from giving Indians greater opportunities for influencing Army policy, actually make the constitutional position in some respects worse than at present. While at present the Governor-General and his Council, three Members of which are Indians, "superintend, direct and control"\* the military government of India, the Governor-General, assisted by a Counsellor appointed at his discretion, will in future solely determine Army policy. A direction in the Instrument of Instructions

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\* Government of India Act, Section 33.

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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to encourage joint consultation between the Ministers and Counsellors is obviously no satisfactory substitute for the opportunities which the present statute affords to the Indian public of expressing its views through the Indian Members of the Executive Council. Past experience of the actual working of a similar direction to Provincial Governors as regards joint consultation between Executive Counsellors and Ministers justifies this statement. In Madras under Lord Willingdon joint consultation was invariably the practice, while in some other provinces separate meetings of the two sections of the Executive were the rule rather than the exception. Nor were these variations due to local circumstances, for in the same province under different Governors the practice has been different.

5. We summarise below the modifications that should, in our opinion, be made in the White Paper provisions relating to Defence:—

(1)\* (a) The Army Counsellor should be a non-official Indian, preferably an elected member of the Federal Legislature, or one of the representatives of the Indian States in the Federal Legislature.

(b) There should be a definite programme of Indianization with reference to a time limit of twenty or twenty-five years, and one of the primary duties of the Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization.

The position of the Army Counsellor, we may point out, will be fundamentally different from that of any responsible Minister. Army policy will, in all vital matters such as discipline, strategy, equipment, etc., be determined by the Commander-in-Chief. The principal functions of the Army Counsellor will be "to express the views of the Governor-General on defence matters in the Legislature, since these will impinge upon strictly Federal matters",† and to co-ordinate policy in all matters in which the activities of the Army Department bring it into contact with the civil administration. We consider that for the discharge of these very limited functions it would be more appropriate and desirable to have a non-official Indian Counsellor, chosen by the Governor-General at his discretion. The Counsellor will, of course, merely advise the Governor-General who will be free to reject his advice.

(2) The Treasury control now exercised in respect of Army expenditure by the Finance Member and the Finance Department should be continued under the new constitution. We fully recognise that in cases of differences of opinion the decision of the Governor-General, who is ultimately responsible for defence, should be final.

(3) All questions relating to Army policy and the annual Army budget estimates should be considered by the entire Government, including all the Counsellors and the Ministers. We again recognise that if the united Cabinet should fail to arrive at an agreement regarding the expenditure to be included in the budget or on other questions referred to it, the Governor-General's decision should be final. This is the minimum that would satisfy the Indian public, especially as the White Paper scheme involves the abolition of the Governor-General's Council, the Indian members of which have not only influenced Army policy, but have actually participated in the determination of that policy.

(4) There should be a statutory Committee of Indian Defence constituted on the lines of the Committee of Imperial Defence. The Committee should consist of the Commander-in-Chief and other Army experts,

\* Sir Henry Gidney considers that the Army Counsellor should be a non-official but not necessarily a non-official Indian.

† Para. 12 of the Second Report of the Federal Structure Committee.



16<sup>th</sup> Novembris, 1932.] JOINT MEMORANDUM BY  
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[Continued.]

the principal Federal Ministers and any other Ministers including representatives of the Indian States whom the Viceroy may at his discretion select.

(5) The cost of defence is primarily an administrative issue, but the scale of Army expenditure is a dominant factor in the financial situation and seriously reduces the margin available for the nation-building services. Our views on this subject are well known to His Majesty's Government. We merely repeat our request that an endeavour should be made further to reduce the military expenditure very substantially and that the provisions we have suggested above to ensure economy in Army administration should be given effect to in the Constitution Act.

(6) There should be a provision in the Statute requiring the consent of the Federal Legislature to the employment of the Indian Army outside India, except, of course, for the purpose of the defence of India itself. At the third Round Table Conference His Majesty's Government agreed to consider the suggestion how far the Legislature might be given a voice as to the loan of Indian forces to the Imperial Government "on occasions when the interests of India within the sphere of defence were not involved."\*

#### *Other Reserved Subjects.*

6. We consider that it is unnecessary to provide for more than two Counsellors for the three Reserved Departments, since the administration of Ecclesiastical affairs does not involve any appreciable work and can easily be entrusted to the Army Counsellor. We have been assured that it is not the intention to appoint more than two Counsellors, but the provision for a third Counsellor in Proposal 12 has created some misapprehension in India, for it is feared that if a third Counsellor is appointed and is placed in charge of the special responsibilities of the Governor-General, there is considerable danger of his developing into a super-Minister, whose activities must necessarily take the form of interference with the work of the responsible Ministers.

#### *Financial Safeguards.*

7. In view of the great importance that has been attached at the Round Table Conferences to the sterling obligations of India and of the attempts that have been made in this country to exploit the nervousness of the investor for political purposes, we have analysed in the second part of our Memorandum in some detail the debt position of India. Three conclusions emerge from this analysis:—

(1) In the first place, five-sixths of India's debt is covered by productive assets, which are mainly State railways and irrigation works.

(2) In the second place, the internal rupee debt of India is nearly one and a half times the sterling debt and an appreciable portion even of the latter is held by Indian investors.

(3) In the third place, a considerable portion of the rupee debt is held by millions of small investors belonging to the upper and lower middle classes who are politically the most vocal section of the population and among whom nationalist feeling finds expression in its most intense form.

The significance of these conclusions lies in the fact that any factors that affect the stability of India's finances or its credit in England would have serious repercussions on India's internal credit.

\* Page 47, Indian Round Table Conference Proceedings, Third Session.

16° Novembris, 1933.] JOINT MEMORANDUM BY  
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8. We must also draw the attention of the Committee to another feature of India's debt. The total expenditure incurred by India on the Great War was £207.5\* millions or about Rs.311 crores at the rate of exchange prevailing at the time. Of this sum the *direct* contribution from Indian revenues towards Great Britain's War expenditure was £146.2 millions or Rs.220 crores, nearly two-thirds of which was found by borrowing. These figures include the gift of £100 millions but *not*, of course, the numerous private gifts or the contributions of Indian States. If British India's total contributions towards Great Britain's war expenditure and the interest paid on War borrowings had been utilised for wiping out the sterling debt of India, the sterling debt to-day would have been very small; for a substantial portion of the amount was borrowed before the War at low rates of interest and until recently the securities were quoted at rates very much below par. We fully recognise that these enormous contributions were made by the Indian Legislature and we also recognise that whatever the circumstances connected with the composition of India's sterling debt the position of the British investor is not affected. We have not referred to this subject at any of the Round Table Conferences, and we refer to it now with great reluctance for the last thing we desire to do is to exploit for political purposes a gift made with the full assent of Indian representatives. Nevertheless when attempts have been made in this country to exploit the nervousness of the British investor for purposes of political propaganda, it is necessary to bring to the notice of the British public and of Parliament the fact that, if India had utilised the money which she contributed towards the expenditure on the Great War to wipe out her sterling obligations, the sterling debt to-day would have been very small. We must appeal to the British sense of fair play to see that the financial sacrifices which India made in order to assist Great Britain in her hour of need do not result in the imposition of severe restrictions on the powers of the Legislature and the responsible Finance Minister in the administration of the country. Nothing would exasperate Indian public opinion more than the realisation of the fact that the enormous sacrifices that India had made have actually become the justification for impediments in the way of her constitutional advance.

9. We now proceed to indicate the modifications we suggest in the White Paper provisions.

(1) The fact that a large number of Indians have invested in Indian sterling securities in this country and that an appreciable portion of the Rupee debt is held by a large class of small investors who will be in a position to wield considerable political influence under the new constitution constitutes in our opinion an effective safeguard for the security of India's finances and of her credit abroad. A special responsibility in respect of financial stability and credit has, however, been imposed on the Governor-General. At the Third Round Table Conference attempts were made by several delegates to define this responsibility precisely and to restrict its application to specific cases such as borrowings to meet budgetary deficits. While considerable sympathy was expressed for this latter demand, the difficulty of drafting a clause that would cover all such cases has apparently been the principal consideration that has influenced His Majesty's Government in retaining the wording adopted in the White Paper. If the difficulties of drafting are found to be insuperable, we consider that the

\* The figures in this paragraph are taken from the publication "India's contribution to the Great War" published by the authority of the Government of India.

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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intentions of His Majesty's Government should be made clear by means of appropriate directions in the Instrument of Instructions.

(2) We recognise that if the Governor-General is to have a special responsibility in respect of financial stability and credit, it will be necessary for him to have a Financial Adviser on the spot, for it is better that he should be guided by an adviser who is stationed in India and is in touch with local conditions than that he should be obliged to invoke the aid of experts in England who have had no direct or recent contact with India. We have, therefore, no objection to the appointment of an adviser for a limited period under the new constitution, but it should be made clear either in the Statute or in the Instrument of Instructions, that the intention is that he should not interfere in any way in the ordinary day-to-day administration.

We are further of opinion that there are considerable advantages in designating him Adviser to the entire Government, i.e., the Governor-General as well as the Ministry. It is also very important that the Financial Adviser should be a financier approved by and acceptable to the Finance Minister. The success of the Financial Adviser will depend not merely on his experience and knowledge but upon his personality and his political outlook. His duties under the Constitution will be to advise the Governor-General when he considers that the financial stability or credit of the Federation is in danger: but a financial crisis is often due to the cumulative effect of a series of acts which individually are not of such consequence as to justify interference. It is obvious that the utility of a Financial Adviser would be gravely diminished if he could deal only with the consequences of a crisis and had no opportunities of preventing it by giving his expert advice at the appropriate moment. It is, therefore, of the utmost importance that the Minister, while retaining fully his right to reject the advice of the Financial Adviser, be encouraged to consult him as frequently as possible. We request the Committee to take the psychological factors into consideration. If the Financial Adviser were chosen without the agreement of the Minister and did not enjoy his confidence, the latter would probably never consult him, however able and experienced he might be. The inevitable tendency would be for the Finance Minister to isolate himself, as far as constitutional provisions would permit, from the Financial Adviser, and the main object for which the appointment is considered necessary would be frustrated. On the other hand, if the selection were made with the approval of the Minister, he would probably get into the habit of consulting him and of accepting his advice without any prejudice to his constitutional right to reject it in cases in which he considered it necessary to do so.

(3) We have recognised the importance on financial grounds of the constitution of a Reserve Bank. We do not propose to offer any detailed observations on a subject which has been discussed by a special committee here and is now before the Indian Legislative Assembly. We wish, however, to emphasize here that it is of the utmost importance that the principal officers of the Bank, namely, the Governor and Deputy Governor, should not be under the influence either of Whitehall or of the City. In the course of the discussion which some of the Delegates to the Round Table Conference had last year with representatives of the City, very great emphasis was laid on the importance of establishing a Bank which had the confidence of the Indian public. Nothing would shake public confidence in India more than the suspicion that the Governor and the Deputy Governor were acting under the influence of Whitehall or the City.



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16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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(4) The legislation in respect of currency and coinage and of the Reserve Bank should not, as proposed in paragraph 119 of the White Paper, be subject to the previous assent of the Governor-General. (Two Members dissent from this proposal.)

These provisions and the establishment of a Reserve Bank, independent of the Federal Executive, would in effect mean that the Finance Minister would not, in respect of currency and exchange policy, be responsible to the Indian Legislature. We draw the attention of the Committee to a statement made by the Secretary of State on December 24th, 1932, at a meeting of the Round Table Conference, that "the British Government have fully accepted the fact that there can be no effective transfer of responsibility unless there is an effective transfer of financial responsibility."\* We do not see how Finance can be regarded as a transferred subject unless and until the Finance Minister is also responsible for the currency and exchange policy of the country and is in a position to determine that policy solely in the interests of India. Indeed, as we have shown in the second part of the Memorandum, so long as the currency and exchange policy of the country is reserved it would be difficult for the Ministers in charge of Industry and Agriculture to accept full responsibility for the development of these Departments. It is unnecessary, especially at present, to emphasize the fact that the prosperity of industry and agriculture is very closely connected with the level of commodity prices, which, of course, is dependent on the currency and exchange policy of the country.

(5) Future Indian sterling loans should be raised on behalf of the Government of India by the High Commissioner or some other suitable agency. The Secretary of State in his evidence before the Committee recognised the justification for a change in the present procedure. The question has a political aspect, since the necessity for securing the position of the British investor is one of the principal justifications for the financial safeguards. We realise that any change of procedure might result in a higher rate of interest for Indian loans, but this possibility must be faced by India at some time or other.

#### *Fiscal Convention.*

10. Under the White Paper provisions, Commerce will be a transferred subject, in charge of a responsible Minister, and fiscal policy will be determined solely by the Ministry and the Legislature. Since the special responsibilities of the Governor-General do not include fiscal policy or the other matters at present dealt with under the Fiscal Convention, the Governor-General will, in regard to such matters, be guided by the advice of his responsible Minister. We have no modifications to suggest as regards the provisions of the White Paper, but in view of statements that have been made in this country, we wish to draw the attention of the Committee to the following passage in the Report of the Joint Select Committee of 1919:—

"Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada, and South Africa."

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\* Page 79, Round Table Conference Reports, Third Series.



16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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The further declaration based on this passage made by Mr. Montagu in 1921 in reply to a deputation from Lancashire cannot be too often quoted. He said:—

“After that Report by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaints from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first.”

The confidence inspired by this declaration of policy and the policy of discriminating protection (which, it may be noted, is a far more diluted form of protection than the system in force in the Dominions) have led to the remarkable industrial development in India during the last decade, to which reference was made by the witnesses who appeared on behalf of the Manchester Chamber of Commerce. Any departure from this policy would cause dissatisfaction of the very gravest character in India and the consequences might be most disastrous even from the point of view of British commercial interests.

11. At a very late stage of our deliberations a suggestion has been made that while complete freedom in the matter of tariff arrangements should be definitely recognised by Statute, there should be a clause prohibiting discriminatory tariffs penalising British imports as compared with those of other countries, imposed with the object of exercising political pressure on Great Britain. It was explained that such a clause would not prevent discrimination against Great Britain if it was necessary in the economic interests of India, nor would it restrict in any way the right of India to conclude trade agreements with foreign countries in the interests of Indian commerce and industry. For instance, it was made clear that a reciprocal agreement with Japan as regards the purchase of Indian cotton by Japan and the purchase of Japanese cotton goods by India would not come within the scope of this clause even if it involved a certain measure of discrimination against Great Britain.

12. The possibility of the tariff being utilised as an instrument of political pressure is remote. Our fear is that misunderstandings are bound to arise if the Governor or the Governor-General is the authority that will decide whether there is a political motive underlying the economic policy of the Ministers. If British politicians have been alarmed by some of the statements of the Congress and some of the implications of Congress policy, we venture to point out that Indian commercial interests have also been very disturbed by statements in a section of the British press that in the economic interests of Great Britain there should be no relaxation of Parliamentary control.

13. We would like in this connection to refer briefly to the tariff developments in the past and to their psychological reactions on Indian public opinion. The efforts of Lancashire to interfere with the tariff arrangements of India in the latter half of the last century, the abolition of the whole of the import duties in 1881 after a memorial by the Manchester Chamber of Commerce and a prolonged controversy between the Secretary of State and the Government of India, and finally the imposition of excise duties on cotton goods in 1896, again under pressure from Lancashire, had had very serious political repercussions on Indian public opinion, which are familiar to all who are acquainted with the fiscal and political history of India

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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during the last 50 years. The excise duty on cotton goods became a grave political issue and the demand for its abolition continued long after the levy of heavy import duties on cotton goods. The grant of freedom in respect of tariff arrangements under the Fiscal Convention of 1919 and the abolition of the excise duties in 1925 have had a remarkable effect on the fiscal outlook of India and in particular on its attitude on the question of Imperial preference. In 1926 India had refused to accept the full policy of Imperial preference; but a Bill for the grant of preference to British steel was carried through the Legislature in 1927 though by a small majority. The Ottawa agreement was ratified by the Legislature last year by a very large majority, and the Indian tariff now provides for preference for several classes of British goods. The reason for the change has been explained in the evidence of Sir Charles Innes, who was a member of the Viceroy's Council in charge of Commerce for five years and is undoubtedly one of the greatest authorities on Indian commercial matters. The following is his reply to Mr. Davidson's question No. 5007:—

"I think it was mainly due to the fact that the Indians realised that it was for themselves to decide whether or not they would ratify that agreement. In the old days, before we introduced this principle of discriminating protection, every Indian thought that Britain kept India a free-trade country in the interest of her own trade. When the Fiscal Convention was introduced, and when we passed a Resolution in favour of discriminating protection, and the first Steel Bill was passed, we at once transferred all that from the political sphere to the economical sphere, and in recent years in the Indian Legislative Assembly more and more we have been creating a strong Free-Trade party. It was getting more and more difficult for me to pass Protection Bills. I think that is all to the good; it shows the value of responsibility, and I am perfectly sure that if we had not taken that action, you would never have got the Indian to agree to preference on British steel, or to the Ottawa agreement, and it seems to me a very good example of the stimulating effect of responsibility."

14. In these circumstances we request the Committee definitely to recognise by Statute India's freedom to regulate her fiscal policy without any reservations or qualifications. Such a course, we are convinced, would be fully justified by the results. In our opinion, so far as the fiscal relations between Great Britain and India are concerned, the question is not whether there will be any tariff discrimination against Great Britain but whether and to what extent *preference* will be given to Great Britain. A constitutional provision which might never have to be applied in practice but which would tend to offend public opinion in India might seriously prejudice the development of any preferential arrangements as regards Great Britain. India desires to shake hands with Great Britain in token of friendship based on a recognition of equality. A proposal that she should be hand-cuffed before she is allowed to shake hands, lest she be tempted to strike, is hardly the most expedient method of beginning a new era of cordiality and mutual understanding.

#### *Commercial Discrimination.*

15. The question of Commercial Discrimination has been the subject of prolonged negotiations and discussions for many years. Throughout these discussions and negotiations, the expression "Commercial Discrimination" was used in a very limited sense. It had reference solely to internal restrictions on trade and commerce. It was never intended to include tariff arrangements and the other matters dealt with under the Fiscal Convention.

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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In fact, the only reference to the subject in the reports of the first Round Table Conference is found in the Report of the Minorities Sub-Committee.

16. On the question of principle there has always been a substantial measure of agreement. The All Parties Conference which met in India in 1928 and which was presided over by that eminent leader of the Congress, the late Pandit Motilal Nehru, stated in their report (commonly known as the Nehru Report) that "it is inconceivable that there can be any discriminatory legislation against any community doing business lawfully in India". The statement was endorsed in even more emphatic terms by Mr. Gandhi at the second Round Table Conference. It has been accepted on the one hand that there shall be no unfair discrimination against British companies operating in India, while it is equally agreed on the other side that the Indian Government should have all the powers which Great Britain and the Dominions possess to develop indigenous industries by all legitimate methods. The difficulty throughout has been to define by legislation the expressions "legitimate" and "unfair" and also the term "indigenous".

17. The question was considered by the authors of the Montagu-Chelmsford Report and also by the Simon Commission. The former in paragraph 344 of their report made an appeal to Europeans "to be content to rest like other industries on the new foundation of government in the wishes of the people" and to Indians "to abstain from advocating differential treatment aimed not so much at promoting Indian as at injuring British commerce". The Simon Commission considered that it was not feasible to prevent discriminatory legislation by attempting to define it in a constitutional instrument. Any such provision would, in their opinion, have to be drawn so widely as to be little more than a statement of abstract principle, affording no precise guidance to courts which would be asked to decide whether the action complained of was discriminatory. The Parliamentary draftsmen, however, considered otherwise, and attempts have been made in the White Paper in Proposals 122, 123 and 124 to deal with this highly complicated question. The view of the Simon Commission has, however, been justified, for the draft has already been found to be unsatisfactory and a complete redraft has been suggested in the memorandum circulated by the Secretary of State. We must point out that if the clauses are drawn so widely as to prevent legitimate discrimination, the Government would be driven to State socialism as the only method by which the provisions of the Act could be circumvented.

18. Before we deal with this revised draft, we must state very frankly the apprehensions of Indian commercial and industrial interests in this matter. A protective tariff, as regards which complete freedom has been given and is to be continued under the White Paper scheme, is the most common and perhaps the most effective method by which indigenous industries can be fostered and developed. The clauses relating to commercial discrimination also recognise that in the case of bounties, subsidies, or other payments of grants from public funds, discrimination even in the case of British companies operating in India would be legitimate under certain circumstances. These, however, do not exhaust the methods by which other countries, including Great Britain, have attempted to develop indigenous industries or to counteract attempts made by foreign companies to frustrate the objects of a protective tariff. The particular difficulty which is disturbing the minds of Indian commercial men is the possibility of powerful foreign trusts establishing themselves in India and making it impossible for Indian industries to develop, not necessarily by methods which in ordinary commercial practice would be regarded as unfair, but by their superior resources, powers of organisation, political influence, etc. It is immaterial from the Indian



16<sup>th</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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point of view whether these trusts are British or international, nor do we see how legislation can differentiate between a foreign company which is registered in Great Britain and a British company.

The question has already arisen in the case of the match industry. As a result of the heavy revenue imposed on matches in 1922, a big indigenous industry has developed, and the Swedish Match Company has also established several factories in India. When the question whether the revenue duty should be definitely recognised as a protective duty was considered by the Tariff Board in 1928 one of the points which it examined was whether the Government should introduce any special measures to curtail the activities of the Swedish Match Company in the interests of the Indian companies. The Board, which was presided over by an Indian and had a majority of Indians, recommended that a no-discriminatory action was necessary, though the situation required careful watching; but it is interesting to note that the Tariff Board did not consider itself precluded from considering the question of discrimination and examined several possible methods, such as the establishment of a quasi-monopoly under Government control, State control of sales and prices, and a differential excise duty.\*

19. In dealing with the revised draft, it would probably be better for us to state clearly on what lines the draft should, in our opinion, be modified rather than to suggest specific modifications of the draft. We summarise below in the form of propositions our views on this subject:—

(a) We have no objection to the general declaration as to British subjects in regard to the holding of public offices or to the practising of any profession, trade or calling. We would, however, very strongly object to any provision which makes it impossible for India to discriminate against subjects of the Dominions and Colonies which impose disabilities on Indian subjects. We do not wish to elaborate the point further, for His Majesty's Government are aware of the strength and intensity of Indian feeling on this question.

(b) Proposal 124 of the White Paper and the revised draft fully recognise that in respect of bounties, subsidies, or other payments from public funds, discrimination would be legitimate. We would, however, like to point out that the Report of the External Capital Committee of 1924, on which the draft is based, is not the last word on this subject. The conditions imposed in accordance with the recommendations of this Committee have so far been found to be satisfactory, but it is not improbable that altered circumstances will necessitate other conditions or modifications of these conditions with a view to the encouragement of Indian trade or industry. The clause should not, therefore, restrict the right of the Government and the Legislature to impose further conditions, if necessary.

(c) The clauses relating to the special provisions for persons who are British subjects domiciled in the United Kingdom are based on the principle of reciprocity. In the course of the discussions we have referred to several methods by which Western countries have attempted to foster and develop national industries and which might in certain circumstances be held to contravene one or other of these provisions. We have two alternative proposals to make.

20. We strongly hold the view that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter. Any statutory safeguards given to British commercial

\* Appendix A, Report of the Indian Tariff Board regarding grant of protection to the Match industry, 1928.



16° Novembris, 1933.] JOINT MEMORANDUM BY  
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interests would irritate public opinion and would operate as impediments to be a friendly settlement. We therefore earnestly suggest the omission of clause 123 of the White Paper and the corresponding clauses in the re-draft. If any legislation which subjects to unfair discrimination any class of His Majesty's subject protected by this clause is passed by the Federal Legislature, the Governor-General has already the right under clause 39 to reserve the Bill for the significance of His Majesty's pleasure. Any such action on the part of the Governor-General would itself put the rival parties in the proper frame of mind for a satisfactory agreement. The fear on the one hand of the exercise of the ultimate veto and on the other the possibility of assent being given in view of the strongly expressed public opinion in the matter would probably induce the parties to arrive at a satisfactory compromise.

(Sir Henry Gidney dissents from this proposal.)

21. A less satisfactory alternative (though in our opinion much better than the White Paper proposals) would be the inclusion of legislation, which discriminates against any class of His Majesty's subjects in India, in the list of legislation which, under Proposal 119, requires the previous assent of the Governor-General given at his discretion. It should, however, be made very clear by means of a provision in the Statute itself or by means of appropriate directions in the Instrument of Instructions that the assent should not be refused unless the object of the legislation is "not so much to promote Indian commerce as to injure British commerce."

We consider that a clause drafted generally on these lines would be preferable, though it is open to the objection referred to in paragraph 12.

In the first place a provision of this sort would be more elastic than the White Paper provision, for the Governor-General or the Governor, as the case be, would be in a position to decide with reference to the merits of each individual case whether the measure was a legitimate attempt, intended to promote Indian industries, or whether its aim was primarily to injure British commerce in India.

In the second place it would avoid a reference to the Courts to which there are obvious objections, some of which have been given by the Simon Commission in paragraph 156, Volume II of their Report. We do not think that the Courts should be placed in a position in which they might have to give a decision contrary to strongly expressed public opinion in the Legislature. Indeed, any attempt to test the legality of popular legislation by a foreign company would at once raise political issues and would tend to mobilise the forces of public opinion against the company concerned. European companies have during the last four years realised how extremely effective a boycott, supported by public opinion, can be in India.

In the third place a reference to the Federal Court with the right of appeal would mean considerable uncertainty and delay, which might in certain circumstances frustrate the very object of the legislation. Moreover, if the legality of the legislation is challenged, not immediately, but some years after the passing of the Act, a decision of the Federal Court declaring the legislation *ultra vires* on the ground of discrimination would inflict heavy losses on the companies, which in the meanwhile had invested capital and commenced operations.

22. We see grave practical objections to any constitutional provisions against administrative discrimination. Indian Ministers in charge of Transferred Departments in the Provinces have exercised unrestricted powers in respect of contracts and the purchase of stores for the last twelve years and there has been no complaint from any British companies that the powers have been abused. Apart from the fact that any provision in the new constitution which would enable the Governor-General or the Government to interfere

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with the discretion of the Indian Ministers in these matters would be very strongly resented as an encroachment on the rights already granted by convention, we are convinced that administrative interference would, in practice, seriously affect the relations between the Governor-General or the Governor and his Ministers. In practice no such discrimination against British companies in India is likely to take place, especially as the vast majority of the shareholders in many of the so-called European companies in India, such as the jute companies of Bengal, are Indians. The Indian shareholders, like the shareholders of any other country, do not concern themselves very much with political or racial issues so long as they get their dividends regularly. Although the shareholders in the jute companies have been predominantly Indian, the management and direction has, as is well known, been almost exclusively European.

#### *Railway Board.*

23. The question of the constitution of a Statutory Railway Board was never discussed at the Round Table Conferences but was considered by the Consultative Committee of the Round Table Conference in India. This Committee, while recognising the advantages of the establishment by Statute of a Railway Board for the administration of the Indian Railway system on commercial lines, considered that the Constitution should merely contain a clause requiring the establishment of such a body and that the constitution, functions and powers of the Board should be determined by an Act of the Federal Legislature. We agree with this recommendation.

#### *Federal Legislature.*

24. We generally accept the proposals in the White Paper both as regards the composition of the Lower Federal Chamber and as regards the method of election to it.\* The representatives of some of the bigger Indian States have urged the desirability of smaller Legislatures and also the adoption of an indirect system of election. The arguments that have been advanced against direct election are familiar to those who have taken part in the constitutional discussions of the last five years, but since the matter is of such vital interest we propose to deal with the principal objections which are as summarised below:—

(1) Direct election, even with Legislatures of the size contemplated by the White Paper scheme, would necessitate extensive constituencies, and with the comparatively undeveloped state of communications in India it would be impossible for the individual member to maintain that personal contact with the electorate which is the essence of the democratic system.

(2) The vast mass of the electors who are to be enfranchised under the White Paper scheme are illiterate, and in the absence of a well-organised party or press, it would be difficult for the illiterate voter to understand the complicated and in some cases highly technical issues which the Federal Government would deal with under the new constitution.

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\* Some members of the Delegation would much prefer smaller legislatures though they are in favour of direct election to the Lower Chamber. One member considers that in view of the special circumstances of his community at present, indirect election would be preferable.

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(3) India has not sufficient men with the necessary qualifications to fill Provincial and Central Legislatures of the size provided for in the White Paper scheme, and a large Federal Legislature is unnecessary for the purposes of the Federal scheme, since the functions of the Federal Government under this scheme will be very restricted.

25. The first two arguments have been answered in the following passage from the Government of India's despatch on a similar proposal made by the Statutory Commission:—

“First, the central elector has exercised the franchise with increasing readiness and at least as freely as the elector to provincial councils. A great deal of the business of the central legislature is as intimate to the elector, and is as fully within the scope of his understanding as the business of the provincial councils. We need cite only such matters as the Sarda Act, the income-tax, the salt tax, the railway administration, and postal rates. Even more abstruse matters, such as the exchange ratio and tariffs, interest large sections of the electorate. Second, the electoral methods natural to the social structure of India may be held to some extent to replace personal contact between candidate and voter, a contact which adult suffrage and party organizations make increasingly difficult in western countries. The Indian electorate is held together by agrarian, commercial, professional and caste relations. It is through these relations that a candidate approaches the elector, and in this way political opinion is the result partly of individual judgment, but to a greater extent than elsewhere of group movements. These relations and groups provide in India a means of indirect contact between voter and member, reducing the obstacles which physical conditions entail. Moreover, we are impressed by the further consideration that ten years ago Parliament of its own motion set up for the first time a directly elected Assembly, representative of the whole of India. That Assembly, in part perhaps because it is directly elected, has appealed to the sentiment of India, and sown the seeds, as yet only quickening, of real representation. Accordingly, unless new considerations of greater importance have to be taken into account, we feel reluctant as yet to condemn an experiment undertaken so recently in a country awakening to political consciousness.”

Apart from the other weighty arguments which have been urged by others in favour of a system of direct election, we wish to draw the attention of the Committee to the possibility, almost amounting to certainty, of Provincial elections being fought on All-India issues if the Federal Legislatures were indirectly elected by the Provincial Councils. The result would be that none of the advantages claimed for the indirect system could be secured, since All-India issues would be voted upon by an electorate of 35 millions instead of by the more restricted electorate recommended by the Lothian Committee for the Federal Assembly.

26. As regards adequacy of qualified men to fill the legislatures, whatever the conditions in the Indian States, no-one who is in touch with conditions in British India doubts that, except perhaps in the case of the depressed classes, men with the necessary qualifications will not be available. Our fear, on the other hand, is that the number of candidates will be embarrassingly large.

27. We consider that there should be a definite provision regulating the procedure for the participation by representatives of Indian States in



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matters of exclusively British Indian interest. The following formula indicates the procedure which in our opinion should be followed:—

(1) In a division on a matter concerning solely a British Indian subject, the representatives of the Indian States will not be entitled to vote.

(2) Whether a matter relates solely to a British Indian subject or not will be left to the decision of the Speaker of the House, which will be final.

(3) If a substantive vote of "No Confidence" is proposed in the House on a matter relating solely to a British Indian subject, the representatives of the Indian States will be entitled to vote since the decision on such a question will vitally affect the position of a Ministry formed on the basis of collective responsibility.

(4) There should be a definite provision in the Constitution regarding the procedure on this important point, since the issues raised affect the status and rights of the representatives of the Indian States on a question of voting in the Legislature.

(5) If the Ministry is defeated on a vote of the Legislature on a subject of exclusively British Indian interest, it will be for the Ministry to decide whether it should continue in office. It will not necessarily resign as a result of the vote.

#### *Provincial Constitutions.*

28. We approve generally the scheme of Provincial responsibility provided for in the White Paper proposals, and our observations and suggestions are confined to matters of detail.

(1) We are very strongly opposed to the proposal that Law and Order or any section of the Police Department should be reserved. In the first place, the isolation of this Department would result in the intensification of the hostility to this Department which would be increasingly recognised as the agency of an alien Government. In the second place, the maintenance of Law and Order is very closely connected with the administration of the other departments, since the Police are the agency through which in the last resort the policy of the other departments is enforced. For instance, the periodical Moplah outbreaks in the south, the tenancy agitation in the U. P., and the Gurudwara agitation in the Punjab were due to agrarian or religious movements which necessitated action in the Transferred Departments. To give another instance, the enforcement of prohibition, which has the sympathy of a large section of the population in India, is, as has been demonstrated by the American experiment, primarily a question of Law and Order.

(2) Any special provision for dealing with the terrorist activities in Bengal and elsewhere, which would involve a restriction of ministerial responsibility in respect of Law and Order, would, apart from its political reactions, defeat the object in view. It is well-known that the terrorist activities have been aggravated by social and even religious influences, unemployment among the University graduates, and by economic conditions of the Province in general. Absence of any strongly expressed public opinion against the movement has also been one of the principal factors that has contributed to its growth. Only an Indian Minister who is very closely in touch with the classes of the population from which the terrorists are drawn can mobilise the forces of public opinion against the movement and deal effectively



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with the social and the other factors that have influenced its growth.  
(Sir Henry Gidney dissents.)

(3) There is nothing in the White Paper scheme which could prevent the Governor-General from carrying out the suggestion that, while Law and Order would be completely transferred in the Provinces, there should be a small organisation directly under the Governor-General which would, in co-operation with the provincial authorities, supply him with information relating to movements of a subversive character which extend over more than one Province and which raise questions relating to the defence and security of the country. The military section of the C.I.D. does, as a matter of fact, discharge this function.

(4) The Instrument of Instructions should definitely contain a direction to the Governors that the collective responsibility of the Cabinet with a Prime Minister should be introduced from the very inception of the provincial constitutions.

(5) *Special responsibilities of the Governor.\**

While we recognise that certain special responsibilities would have to be imposed on the Governor in view of the demands of the Minorities and other circumstances, we consider that the following modifications should be made in Proposal 70 of the White Paper:—

(i) In respect of the prevention of grave menace to the peace and tranquillity of the Province, the Governor's action should be confined to the Department of Law and Order. In other words, these special powers should not be exercised so as to interfere with the administration of the other Departments. It is suggested that the special responsibilities should be restricted to cases in which the menace arises from subversive movements or the activities of a person or persons tending to crimes of violence.

(ii) In the case of Minorities, the expression "legitimate interests" should be more clearly defined and it should be made clear that the Minorities referred to are the racial and religious minorities which by usage are generally included in this expression.

(iii) In the case of the Services, the expression "legitimate interests" should be clearly defined. The Governor's special responsibility should be restricted to the rights and privileges guaranteed by the Constitution. (The other special responsibilities of the Governor will be dealt with in the appropriate sections of this memorandum to which they relate.)

(6) The power of issuing ordinances should be given only to the Governor-General as at present. The Governor should have no difficulty in getting ordinances issued even in emergencies as at present. (Some members of the Delegation dissent from this proposal and support the White Paper proposal.)

\* Sir Abdur Rahim is of the opinion that the special responsibilities and special powers of the Governor as proposed in the White Paper will make it extremely difficult for responsible Governments in the Provinces to function and considers that the provision made to meet cases of breakdown of the Constitution should suffice to meet all serious contingencies. He is convinced that if the rights and interests of the Minorities and the Services are properly defined in the Constitution Act itself that will afford more effective protection to them. The Governor should, however, be responsible for carrying out the orders of the Federal Government and protecting the rights of Indian States.

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(7) We are opposed to the creation of second Chambers in Bengal, Bihar and the U.P. The opinion of the present Legislative Councils in these Provinces is not conclusive in the matter.

If, however, in spite of our opinion a second Chamber with a nominated element is to be constituted in these Provinces, we consider that it should be definitely recognised that persons appointed Ministers must be or become within a stated period elected members of one of the two Chambers. (One member of the Delegation considers that in the case of the United Provinces a Second Chamber is necessary, while another would like to have it in all the three Provinces.)

(8) In respect of the Governor's Act, referred to in Proposals 92 and 93 of the White Paper, most of us would prefer that, if any legislation were required for the discharge of the special responsibilities imposed on the Governor, he should take the entire responsibility for such legislation and should not be required to attempt to secure the assent of the Legislature.

#### *Federal Finance.*

29.—(1) The allocation of the sources of revenue between the Federation and the units, which follows with slight modifications the recommendations of the Peel Committee of the Third Round Table Conference, is the result of a compromise and we do not, therefore, suggest any change.

(2) In regard to the division of income-tax, however, we observe that the contentions of the British Indian members of the Peel Committee have not been accepted. These members, realising the importance of strengthening the financial position of the Federal Government by the permanent allocation of a portion of the income-tax, agreed, as a compromise, to the suggestion that the proceeds of the income-tax which are not derived solely from residents in British India should be allotted to the Federal Government, in addition to the Corporation Tax which would be definitely classed as a Federal source of revenue. According to the figures placed before the Peel Committee, the amount of income-tax so allotted was roughly about  $2\frac{1}{2}$  to 3 crores of rupees, or only about 20 per cent. of the balance remaining after the allocation of the Corporation Tax to the Federal Government.

Under the White Paper scheme, the portion of the income-tax to be assigned to the Federation has been fixed at not less than 25 per cent. and not more than 50 per cent. of the net proceeds, the exact percentage to be fixed by a committee just before the inauguration of the Federation.

Since the Percy Committee have definitely found that the pre-Federation debt of India is covered by the assets to be transferred to the Federal Government, there is no justification in theory for the assignment to the Federal Government of any portion of the personal income-tax paid by the residents of the Provinces, since no corresponding tax on incomes will be paid by the States. Any such proposal would have serious political repercussions, for an economic issue of this sort might determine the line of party cleavage in the Federal Legislature. It would be very deplorable if at the very inception of the new constitution the representatives of British India and those of the Indian States were ranged in opposite camps in the Federal Legislature.

(3) In Proposal 137, it is stated that the Federal Legislature will be empowered to assign the salt duty, the Federal excises and the export duties "in accordance with such schemes of distribution as it may determine". It should be made clear that the system of distribution should be on the basis

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of population or according to some other method that would not render possible the exercise of administrative control over the units of the Federation. In other words, the scheme of distribution should not be interpreted as including grants-in-aid as an instrument of control.

(4) There should be a provision in the Constitution Act for the appointment by the Governor-General of a committee (say, three years after the Federation has begun to function) to institute an inquiry into the financial conditions of the Federation and of the British Indian Provinces and to make recommendations for the allocation of the income tax to the Provincial units according to a time-table.

#### *Public Services.\**

30. No part of the White Paper proposals has caused more dissatisfaction in India than the provisions relating to the Public Services. Before we indicate our views on these provisions, we may draw the attention of the Committee to certain features of the duties and conditions of service, particularly with reference to the key Service, namely, the Indian Civil Service. The Covenant or contract signed by a member of the Indian Civil Service imposes many obligations on him, but confers hardly any rights or privileges, which have all been granted either by Statute or by rules, such as the Devolution Rules and the Classification Rules. The salaries and other conditions of service have been varied from time to time and are still subject to variation by the Secretary of State in Council. The duties and functions of this Service have also undergone considerable changes. Originally the Collector and Magistrate was a fiscal officer, a revenue and criminal judge, the local head of the police, jails, education, municipal and sanitary departments. Owing to the increase of specialisation by the creation of new departments, transfer of certain departments to the direct control of the Imperial Government, de-officialisation of local authorities and other administrative changes due to the introduction of the Montagu-Chelmsford reforms, his duties have been considerably restricted, but he continues to be the administrative head of the district, whose principal functions, apart from the collection of revenue, are the maintenance of law and order and the co-ordination of the work of the different departments of Government in the district. Many of the higher administrative appointments and almost all the higher secretariat appointments in the Provincial Governments and in the Government of India are reserved for the members of this Service under the present Constitution.

31. According to the White Paper scheme, the Secretary of State will continue to recruit on the present basis for the two key Services, namely, the Indian Civil Service and the Indian Police. There is to be a statutory inquiry after a period of five years after which Parliament will determine on what basis future recruitment should be made.

Very strong objection has been taken in India to this part of the scheme which is, it may be noted, not in accordance with the recommendations of the Services Sub-Committee of the Round Table Conference. We consider that, after the passing of the Constitution Act, recruitment for the Central Services should be by the Federal Government and for the Provincial Services, including the Indian Civil Service and the Indian Police, should be by the Provincial Governments, who should have full power to determine the pay and other conditions of service for future recruits and also the proportion

\* Wherever the word 'Indian' is used, it includes 'Statutory Indians.'

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of Europeans that should be recruited.\* We give below some statistics, necessarily based on certain assumptions, as to the number of European officers that would remain in service even if recruitment were completely stopped in 1935:—

|   | <i>Indian Civil<br/>Service.</i> | <i>Indian<br/>Police.</i> |
|---|----------------------------------|---------------------------|
| (1) Total sanctioned strength ... ..  | 1,225                            | 683                       |
| (2) Present strength (on 1st January, 1932,<br>latest figures available) ... .. | 1,308                            | 680                       |
| (3) Number of European officers at present<br>(1st January, 1932) ... ..        | 843                              | 528                       |
| (4) Number of European officers if recruitment<br>were stopped in 1935—         |                                  |                           |
| (a) in 1935 ... ..  | 762                              | 498                       |
| (b) in 1940 ... ..  | 632                              | 443                       |
| (c) in 1945 ... ..  | 502                              | 388                       |

There would thus be a very substantial European element in the two key Services for another generation, even if European recruitment were completely stopped after the passing of the Act. The proposal that a statutory inquiry should be instituted after a period of five years is open to very strong objection. The problem of European recruitment cannot be considered in isolation. It is very closely connected with standards of administration, the state of communal feeling and other factors which are of a very controversial nature and raise political issues. Any such inquiry even of an informal nature would, therefore, have a grave disturbing effect on the political atmosphere and would seriously affect the relations between the Services and the Legislatures.

32. We now proceed to deal with the existing rights of officers appointed by the Secretary of State in Council which are to be guaranteed by Statute. We may say at once that we have no objection to the proposal that the pensions, salaries, and the privileges and rights relating to dismissal or any other form of punishment or censure should, in the case of the existing members of the All-India Services, be fully safeguarded by the Constitution. We consider, however, that the Governor-General in his discretion (*not* the Secretary of State in Council) should be the statutory authority for the protection of these rights and privileges. We realise that the Governor-General acting in his discretion is responsible to the Secretary of State, and that constitutionally there would be very little change. Indian public opinion, however, attaches great importance to this formal change, which would be more in keeping with the rest of the Constitution.

To meet the reasonable demands made by the Services Association we are prepared to go further and agree to the following concessions:—

(1) Although the members of the All-Indian Services, appointed after the commencement of the Government of India Act of 1919, are not entitled to the "existing and accruing rights or to compensation in lieu thereof" referred to in Section 96B (2) of the Government of India Act, we have no objection to the proposal that these rights should be extended to the officers appointed before the passing of the Act.

(2) We agree to the proposal that the right of retiring on proportionate pension should be extended to all European members of the All-India Services, appointed up to the passing of the Act.

\* Sir Henry Gidney dissents from this proposal.



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[Continued.]

33. Our objection is mainly to the rights and privileges which operate as restrictions on ministerial responsibility. We foresee many administrative developments. We therefore consider that there should be no restriction on the Ministers as regards postings, allocation of work, reorganisation of services and functions, and other matters which relate to the enforcement of policy and the efficiency of administration. The Ministers should also have the power of abolishing individual appointments now held by members of the All-India Services, subject to right of compensation in certain cases on the lines indicated in the evidence of the Secretary of State.

34. We see no justification for the proposal to exempt from income-tax the pensions of retired officers of the All-India Services. Any such exemption would not benefit the retired officials resident in Great Britain or Northern Ireland who are subject to the British income-tax and who come within the scope of the double income-tax arrangements. Whether India levied an income-tax on pensions or not, they would continue to pay income-tax at the British rate. The only persons who would be protected are the retired officials who have settled in foreign countries in order to evade the British income-tax. We do not think that these officers deserve the sympathy of Parliament or that any special constitutional provision should be made for their benefit.

The question is not, in fact, connected with service rights or privileges, for retired British officials in India are subject to Indian income-tax. The matter is one for adjustment between the British Treasury and the Indian Government, if the latter decided to remove the present exemption.

It is possible that, owing to the fact that under the Indian income-tax provisions no exemptions are given for families, in a few cases the British rate might be lower than the Indian rate of income-tax and that a few retired officials in Great Britain and Northern Ireland would therefore become subject to a higher rate of tax. To avoid any hardship in this comparatively small number of cases, we would have no objection to any arrangements under which retired officials in Great Britain and Northern Ireland would continue to pay income-tax at the same rate as at present.

#### *Appointment of Governors.*

35. We strongly feel that the Governors of all the Provinces should under the new Constitution be selected from amongst public men in Great Britain and in India. Members of the permanent services in India, whether retired or on active service, should be excluded from these high appointments.

#### *Automatic Growth of the Constitution.*

36. The Simon Commission declared that one of the most important principles which should be borne in mind in considering the constitutional proposals was that the new Constitution should as far as possible contain within itself provision for its own development. As the Commission observed—

“It has been a characteristic of the evolution of responsible government in other parts of the British Empire that the details of the constitution have not been exhaustively defined in statutory language. On the contrary, the constitutions of the self-governing parts of the British Empire have developed as the result of natural growth, and progress has depended not so much on changes made at intervals in the language of an Act of Parliament as on the development of conventions and on the terms of instructions issued from time to time to the Crown's representative.”

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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[Continued.]

The Prime Minister's declaration which we have quoted in the introductory paragraph of this memorandum also states clearly that—

"In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government."

We recognise, however, that Parliament cannot now, once for all, completely divest itself of its ultimate responsibility. We make no detailed proposals as regards this subject, but indicate our views in the following propositions:—

(a) The machinery to be provided in the new Act for the further constitutional advance of India should not involve an inquiry such as that conducted by the Simon Commission.

(b) The Constitution Act should definitely give the power of initiating proposals for constitutional changes to the Indian Legislatures. Such proposals should be required by Statute to be placed before Parliament in appropriate form through the Secretary of State.

(c) The constitutional procedure required for implementing these proposals should not, except in a few strictly limited cases, involve Parliamentary legislation.

(d) Provisions analogous to those of Section 19A of the present Government of India Act should be inserted in the new Act for the purpose of facilitating the devolution of authority by Parliament to the Indian Legislatures.

Our proposals are intended to secure that the process of further transfer of responsibility shall be continuous. We recognise that during an initial period, which in our opinion should not exceed ten years, certain provisions of the new Constitution must remain unaltered. We cannot, however, too strongly impress upon the Committee that unless the new Constitution brings the realisation of a Government fully responsible to the Legislature within sight and its provisions are so framed as to render possible further constitutional progress by the action of the Indian Legislatures, political activity outside the Legislatures will continue to absorb important sections of the politically-minded classes in India.

37. We have not in this memorandum attempted to exhaust all the issues which the White Paper proposals raise. On the points, which we have not specifically dealt with in the preceding paragraphs, we have expressed our opinion either individually or collectively in the course of the discussions or in the course of the cross-examination of the Secretary of State.

AGA KHAN.  
ABDUR RAHIM.  
M. R. JAYAKAR.  
H. S. GOUR.  
SHAFAT AHMAD KHAN.  
A. H. GHUZNVI.  
PHIROZE SETHNA.  
BUTA SINGH.  
HENRY GIDNEY.  
B. R. AMBEDKAR.  
ZAFRULLA KHAN.  
N. M. JOSHI.

B. RAMA RAU,  
Secretary,  
British Indian Delegation.  
17th November, 1933.

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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[Continued.]

## PART II.

### APPENDICES.\*

#### APPENDIX A.†

1. In this section we propose to deal with the more important general criticisms directed against the basic structure of the White Paper Scheme. We summarise below the principal points which have been raised in the evidence of critics such as Sir Michael O'Dwyer and Mr. Winston Churchill and in the newspaper campaign that has been carried on in this country for some time.

(a) The proposed All-India Federation is not an organic growth but an artificial creation.

(b) The federal idea, which is an abstraction with no roots in the soil, was precipitately accepted by the Princes in their anxiety to safeguard their future which they thought was threatened by the 1929 declaration about Dominion Status.

(c) The Provinces must first become political entities before the necessary conditions for bringing a federal constitution into being can arise.

(d) There has been a sensible deterioration in the services transferred to responsible Ministers under the Montagu-Chelmsford scheme. There should, therefore, be a further period of probation during which all the Provincial services, except Law and Order, should be transferred subject to certain restrictions and safeguards.

(e) The transfer of all services, except Law and Order, in the Provinces would give the Indian responsible Ministers complete control over the administration and development of all the nation-building services and there should be no Central responsibility until and unless this experiment has proved a success.

#### *The Evolution of the Federal Idea.*

2. The use of the expression "All-India Federation" in connection with the constitutional discussions has inevitably suggested analogies which are based on the genesis of federations in other parts of the Empire, in Europe and America, and which, as explained in paragraph 6 of the Introduction to the White Paper, are not applicable to the peculiar conditions under which the Indian constitution has evolved since Great Britain accepted responsibility for the government of India. The first three criticisms referred to in the last paragraph have a special appeal to British politicians who are accustomed to a gradual and natural growth of political institutions and have an almost instinctive abhorrence of novelty or idealism in constitutional schemes. To answer these criticisms effectively it would be necessary to describe in some detail the various stages, spread over a period of 70 years, in the evolution of the present administrative and constitutional machinery of India. The Montagu-Chelmsford Report and the Simon Commission Report have described the process at some length and we shall merely draw the attention of the Committee to the principal features of India's

\* Sir Henry Gidney is not a signatory to these Appendices.

† Some of the Members of the Delegation were not able to examine the Appendices in their final form. It must not therefore be assumed that all the Delegates have endorsed every one of the statements in the Appendices, though they all accept the conclusions in Part I, subject to the dissents noted in a few cases.

16<sup>o</sup> *Novembris*, 1933.] JOINT MEMORANDUM BY  
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[*Continued.*]

constitutional development which have a direct bearing on the criticisms referred to in the last paragraph.

3. The principal features of the Montagu-Chelmsford reforms were:—

(a) The demarcation of the Central and Provincial spheres of administration and legislation by means of a classification of subjects.

(b) An almost complete separation of the sources of Provincial and Central revenues and the definite recognition of the financial autonomy of the Provinces.

(c) A preponderant non-official majority at the Centre as well as in the Provinces, based on a widely elected franchise.

(d) Responsibility of the Executive to the Legislature in respect of certain subjects in the Provinces.

The degree of Provincial autonomy (we use the expression here in the sense of freedom from control by the Central authority) attained under this system has not been generally recognised. The Central Government does not now exercise any control over Provincial expenditure except in respect of certain matters affecting All-India Services. The budgets of Provincial Governments are not submitted either to the Government of India or to the Secretary of State for approval before they are presented to the Provincial Legislatures; and Provincial solvency is ensured only by the indirect method of control over provincial borrowings which, it may be noted, has been retained under the White Paper scheme.

As regards the administration of the transferred subjects, there has been, of course, little or no control by the Central Government, but even in respect of the reserved subjects, the Government of India have in accordance with the recommendations of the Joint Select Committee of 1919 refrained from interference, except perhaps in the domain of Law and Order, where intervention has been more frequent owing to subversive movements extending over the whole of India. Mainly as a result of the financial independence conferred on the Provinces, Provincial autonomy has already become an accomplished fact, and provincialism has found expression in the Central Legislature even through official representatives in a form which the Central Government have often found extremely embarrassing.

4. The subjects classified as Central under the Montagu-Chelmsford reforms are more or less the same as those assigned to a Federal Government in western countries. A Central Government which discharges all the functions of a Federal Government elsewhere is thus already in existence. Central legislation does not, of course, apply to the Indian States, but the range of matters in which the States have realised their solidarity with British India is very extensive, and, as we shall show presently, by means of treaties, conventions, and usage a very close association with the Indian States in the sphere of administration has already been established.

(a) *Defence and Foreign Affairs.*

As regards Defence, the Indian States are guaranteed security from without and they share with British India the obligation for common defence. The external affairs of the States are also entirely in the hands of the Government of India and Indian States are for international purposes in exactly the same position as British India. "An Indian State cannot hold diplomatic or other official intercourse with any foreign power. India, of course, is a member of the League of Nations and at Geneva is represented as a unit by a delegation which in practice includes the ruler of an Indian State."



16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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[Continued.]

(b) *Railways.*

The Government of India have complete control over the Indian railways, one-seventh of which run through Indian States. In respect of the strips of territory over which the railways run in the Indian States, the Indian States have in most cases ceded civil as well as criminal jurisdiction. In addition to the British Indian railway system, many States have their own railways which they themselves administer and control, but there is a considerable measure of control exercised by the Railway Board even in respect of these railways. They are subject to inspection by the Government of India and they generally follow the rules and regulations prescribed by the Railway Board.

(c) *Currency.*

Only eight out of 652 States have their own currency, but the currency and exchange policy has always been determined by the Government of India for the whole of India including the Indian States, for apart from other factors, economic necessities have forced the Indian States to adopt the currency policy of the Government of India.

(d) *Posts and Telegraphs.*

637 out of 652 Indian States have already accepted postal unity, i.e., they have agreed to the States being considered for postal purposes as part of British India and have accepted the administration of the Indian Posts and Telegraphs Department in respect of post offices within their boundaries. Out of the remaining 15, five have conventions under which they use British Indian stamps over-printed with the name of the State.

(e) *Customs.*

The States are not consulted in regard to tariff or customs policy, which under the Fiscal Convention is determined by the British Indian Central Legislature and the Governor-General in Council, and customs duties levied by the Government of India have, of course, affected the whole of India including the inland States who form the vast majority of the Indian States. Indeed, the question of maritime customs has been the subject of acute controversy during recent years, and the federal process has been carried so far that, in the opinion of the Butler Committee, the States have a real and substantial grievance which calls for remedy.

(f) *Scientific Departments.*

These subjects do not raise any controversial issues since the results of departmental research are available for British India as well as the Indian States. It may be noted, however, that in regard to one of the most important of these Departments, namely, the Council of Agricultural Research, the Indian States have got definite representation though on a voluntary basis and some of them have actually made substantial contributions towards the expenditure of the Department.

(g) *Taxes.*

In regard to customs duties and the salt duty which contribute the bulk of the Central revenues of the present Government of India, the burden is shared by the residents of Indian States as well as those of British India.

5. It will be evident from the preceding analysis that in the domain of administration the process of federalisation has gone very far indeed. In respect of almost all the subjects to be classed as federal under the new

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constitution, namely, Defence, Foreign Affairs, Currency, Exchange, Railways, Posts and Telegraphs, etc., there is now a common policy applicable to British India as well as the Indian States, determined by the same authority, namely, the Governor-General in Council, who, in the case of British India exercises his powers under the Government of India Act, and, in the case of the Indian States, acts as the agent of the Crown. There has, however, been no parallelism in the political development of the two halves of India. The Central Legislature which exercises a powerful influence on governmental policy (and in the case of the tariff actually determines the policy under the Fiscal Convention) contains an overwhelming majority of elected non-officials from British India but has no representatives of the Indian States. Administrative unity and the greater opportunities afforded to British India of influencing policy have necessarily given rise to a demand for a closer association of the Indian States with the Central Government. Many of the proposals that have been discussed in the past but which did not actually materialise are referred to in the following passage from the Montagu-Chelmsford Report:—

“Lord Lytton’s proposal to constitute an Imperial Privy Council which should comprise some of the great Princes resulted only in the ephemeral and purely honorific body known as the Councillors of the Empress. Lord Dufferin’s institution of Imperial Service Troops was of much greater value in giving actual and useful expression to the feeling of community of interests. Lord Curzon’s plan for a Council of Ruling Princes and Lord Minto’s schemes first for an Imperial Advisory Council and then for an Imperial Council of Ruling Princes were suggestions only a little in advance of the time. The idea which attracted his two predecessors gained fresh life as a result of the conferences which Lord Hardinge held with the Princes to consider questions of higher education in the States. Lord Hardinge made no secret of his desire to seek the collective opinion of the Princes as trusted colleagues whenever possible on matters affecting their Order; and in responding to His Excellency’s invitation, Their Highnesses the Maharajas of Gwalior and Indore also laid stress upon the essential identity of interest between the two halves of India. Lord Chelmsford carried the system of conferences further by utilising them for the purpose of discussing general questions affecting the States as a whole; and His Highness the Gaekwar in welcoming the new development expressed the hope that what had by that time become an annual conference would develop into a permanent Council or Assembly of Princes. Moreover only last year the claims of the States to be heard in matters of Imperial concern were signally recognised by the deputation of His Highness the Maharaja of Bikaner to the meeting of the Imperial Conference and the War Cabinet.”

As a result of the recommendation made in the Montagu-Chelmsford Report, the Chamber of Princes was set up in February, 1921. It is not an executive body and its functions are mainly deliberative, consultative, and advisory. It advises the Viceroy on questions referred to him and it also proposes for his consideration other questions affecting Indian States generally or which are of concern either to the Empire as a whole or to British India and the States in common.

The enormous increases in customs duties since the introduction of the reforms and establishment of the Fiscal Convention, which, as we noted, introduced a measure of responsibility in respect of tariff policy, have tended to intensify the demand for a closer association of the Indian States with the

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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Government of India. As the Butler Committee have pointed out, during Lord Reading's viceroyalty a proposal was drawn up for the establishment of a *Zollverein*, an important feature of which was the association of the representatives of the Indian States with the Indian Legislature in the determination of policy.

Individual Princes even before the publication of the Simon Commission Report made no secret of their desire to associate themselves with British India in a common federation. The following extract from a speech delivered by the Maharaja of Bikaner in 1929 is quoted in the Report itself:—

"I look forward to the day when a United India will be enjoying Dominion Status under the aegis of the King-Emperor and the Princes and States will be in the fullest enjoyment of what is their due—as a solid federal body in a position of absolute equality with the federal provinces of British India."

6. The federal idea, i.e., the desire of the Princes for a closer association with British India for the determination of a common policy in respect of matters of common concern, is thus not of recent origin. It is the logical and inevitable result of forces which have been at work for over 70 years. If we rid our minds of notions and analogies suggested by the evolution of federations elsewhere, it will be clear that the White Paper scheme provides for little more than the formal association of the Indian States in an administration which has already been almost completely federalised, but has been influenced predominantly by British India. The scheme is, therefore, not an artificial creation but is a natural development of the policy announced in the Declaration of 1917. It was definitely foreseen and provided for by the authors of the Montagu-Chelmsford Report, as is evident from the following extract:—

"The gradual concentration of the Governments of India upon such matters (Defence, Tariffs, Exchange, Railways, Posts and Telegraphs, etc.) will, therefore, make it easier for the States while retaining the autonomy which they cherish in internal matters to enter into closer association with the Central Government if they wish to do so. But though we have no hesitation in forecasting such a development as possible the last thing which we desire is to tend to force the pace. Influences are at work which need no artificial stimulation. All that we need or can do is to open the door to the natural developments of the future."

7. From this brief survey of the administrative and political developments in India, two conclusions emerge:—

(a) As a result of the rigid demarcation of Central and Provincial subjects and in particular of the complete separation of the sources of Provincial and Central revenues, Provincial Autonomy is for all practical purposes an accomplished fact.

(b) In respect of the subjects to be classed as Federal under the new constitution, the administration has not only been centralised so far as British India is concerned but has actually been federalised. In other words, in the domain of administration the federal process is almost complete.

These two features of the Indian constitutional and administrative machinery furnish an almost complete answer to the criticisms based on the analogy of the growth of western federations. The conditions under which a federal constitution is emerging in India are fundamentally different from those which existed in Australia, Canada, the United States of America, and Germany before they adopted a federal constitution. In all these countries there existed a number of completely independent States which had control over their defence, their fiscal policy and all the subjects which are normally classed as federal. The necessity for a common defence and the economic advantages

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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of a customs union or a common tariff wall were the two powerful forces which drove the States into a federal union. The British Indian Provinces can never be in the position in which the States of the western federations were, for no scheme that we know of has ever suggested the devolution of central authority on a scale which would make the Indian Provinces responsible for their own defence or their customs policy.

The problem in the case of the other federations was to bring into existence a common administration and to devise a constitutional system suitable for the administration of certain subjects on a federal basis. The task of the constitutional experts in respect of India is not the creation of a federal administration but merely the adaptation of the present constitution to suit the necessities of an administration which has been almost completely federalised, but which is influenced by one section of India. With all respect we venture to point out that the argument urged by the Simon Commission and the critics who have objected to the constitution of a federation simultaneously with the creation of autonomous provinces has no relevance to the Indian problem which confronts Parliament now.

#### *Deterioration in Services.*

8. We must now deal with the charge that there has been a sensible deterioration in the services transferred to responsible Ministers under the Montagu-Chelmsford scheme. This assertion has been made by Mr. Churchill before the Committee and forms the basis of a great deal of the press propaganda in this country. When Mr. Churchill was asked by Sir John Wardlaw-Milne to justify the statement, Mr. Churchill refused to develop the subject further since "it would be painful to his Indian friends."

Though Mr. Churchill declined to give the source of his information or the facts on which he based his conclusions, he explained that the deterioration he referred to was not in respect of personnel but in respect of the services rendered to the people. The only specific instances of deterioration that have been cited by the opponents of reforms in India are cases of embezzlement of money in municipalities, corruption in some of the Services, the supersession of two major Municipal Boards in Northern India, and the growth in the arrears of municipal taxes in different Provinces. The principal Services transferred to ministerial control in the Provinces under the Montagu-Chelmsford reforms are:—

- (a) Communications.
- (b) Education.
- (c) Medical Relief and Sanitation.
- (d) Agriculture and Industries.
- (e) Local Self-Government.

9. *Communications.*—As regards communications, it is universally acknowledged that there has been a tremendous improvement in the condition of the roads. We do not claim that the improvement is solely or even mainly due to ministerial direction. The greater interest shown in rural communications as a result of the pressure exerted by rural representatives in the Provincial Councils, the requirements of the rapidly developing motor traffic, the constitution of an All-India Road Board, financed by means of a tax on petrol, and other factors have all contributed to the very striking development in regard to transport facilities in India. Indeed, as Sir Charles Innes has pointed out in his evidence, the emergence of the motor-bus which now reaches remote villages has been one of the important factors



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that have contributed to the growth of political consciousness in rural areas and to the magnitude of the mass movements that have been a feature of the political agitation during the last decade in India.

10. *Education.*—In the following statement the number of educational institutions and the number of students attending them in 1921-22 and 1929-30 are given for comparative purposes.

*Number of Institutions.*

|                         |        | 1921-22. | 1929-30. | Percentage<br>Increase. |
|-------------------------|--------|----------|----------|-------------------------|
| (1) University Colleges | ... .. | 231      | 313      | 35.50                   |
| (2) Secondary schools   | ... .. | 8,987    | 13,152   | 46.34                   |
| (3) Primary schools     | ... .. | 160,072  | 204,094  | 27.50                   |

*Number of Students.*

|                        |        |           |           |        |
|------------------------|--------|-----------|-----------|--------|
| (1) Universities.      |        |           |           |        |
| (a) Boys               | ... .. | 58,066    | 94,025    | 61.93  |
| (b) Girls              | ... .. | 1,529     | 3,141     | 105.43 |
| (2) Secondary schools. |        |           |           |        |
| (a) Boys               | ... .. | 1,110,360 | 2,009,181 | 80.95  |
| (b) Girls              | ... .. | 129,164   | 237,027   | 83.51  |
| (3) Primary schools.   |        |           |           |        |
| (a) Boys               | ... .. | 5,111,901 | 7,332,673 | 43.44  |
| (b) Girls              | ... .. | 1,198,550 | 1,891,406 | 57.81  |

The statement shows a very striking development in all classes of educational institutions. Particular attention may be drawn to the large number of students at the Universities. The figure for 1929-30 was nearly 100,000, and it has enormously increased since then. This figure is of particular interest with reference to Mr. Churchill's statement that "the proportion of the intelligentsia in India is probably smaller in proportion to the amount of the population than in any other community in the world—far smaller than the proportion in Western countries". Though the proportion of literates in India is comparatively very small, the number of those who have received higher education is astonishingly large. We have not been able to get accurate statistics as regards university education in the principal countries of Europe, but we believe we are correct in stating that the number of students at the universities in British India is not only absolutely but relatively to the population greater than in some countries in the West.

11. *Medical Relief and Sanitation.*—The developments in these Departments, as the figures given below show, have been almost as striking as in the case of Education. The organisation of an efficient and fairly widespread agency for the prevention of epidemics has been a feature of the sanitary administration of many Provinces.

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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### MEDICAL AND PUBLIC HEALTH.

*Expenditure (in crores of rupees).*

(1) *Provincial.*

|                             |  |     |     |     | Percentage |          |           |
|-----------------------------|--|-----|-----|-----|------------|----------|-----------|
|                             |  |     |     |     | 1921-22.   | 1929-30. | increase. |
| (a)                         | Medical                                | ... | ... | ... | 2.85       | 4.06     | 42.45     |
| (b)                         | Public Health                          | ... | ... | ... | 1.41       | 2.62     | 85.81     |
| (2) <i>Municipalities.*</i> |  |     |     |     |            |          |           |
| (a)                         | Medical                                | ... | ... | ... | .67*       | .93      | 38.81     |
| (b)                         | Water supply, drainage and conservancy | ... | ... | ... | 4.28*      | 5.84     | 36.44     |
| (3) <i>Local Boards.</i>    |  |     |     |     |            |          |           |
|                             | Hospitals and sanitation               | ... | ... | ... | 1.09       | 2.02     | 85.32     |

\* Figures relate to 1920-21.

*Number of hospitals and patients treated.*

|                                |                   | 1920.      | 1929.      | Percentage increase. |
|--------------------------------|-------------------|------------|------------|----------------------|
| I. Hospitals                   |                   |            |            |                      |
| (1)                            | State             | ...        | ...        | ...                  |
|                                |                   | 407        | 546        | 34.15                |
| (2)                            | Local Authorities | ...        | ...        | ...                  |
|                                |                   | 2,655      | 3,807      | 43.39                |
| II. Number of patients treated |                   |            |            |                      |
|                                |                   | 36,342,417 | 54,132,152 | 48.95                |

12. *Agriculture and Industries.*—It is difficult by means of statistics to indicate the improvements that have been introduced in agricultural methods by governmental action. For a detailed description of the activities of the Provincial Departments of Agriculture and of the Central Board of Agricultural Research, which was established as a result of the recommendations of the Linlithgow Commission, we must refer the members of the Committee to the official reports that are published annually. We may, however, give here one instance of the results achieved by the application of scientific research to agriculture. The imports of sugar into India until very recently were so heavy that the customs duties levied on sugar yielded Rs.10.7 crores in 1930-31, i.e. nearly 23 per cent. of the total customs revenue and over 10 per cent. of the total net revenue of the country. Owing to the introduction of improved types of sugar cane and the levy of protective duties, the production of sugar is growing so rapidly that it is estimated now that India will be completely self-supporting as regards sugar within the next three or four years.

The astonishing development of industries in India is generally admitted and in fact has caused some alarm in foreign countries. It is, therefore, unnecessary for us to give any figures, nor do we claim that this development is due to ministerial action in the Provinces. As we shall have occasion to state in a subsequent section of this memorandum, it is only the Central Government that can create the conditions necessary for the development of industries.

13. *Local Self-Government.*—The principal services entrusted to local authorities in India are rural communications, elementary education, medical relief and sanitation. The statistics we have given above relate both to Provincial and local institutions. Judging by these, it is obvious that on the whole there has been a marked development. Emphasis has, however, been laid not so much on the development of the services entrusted to the

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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care of these authorities, but rather on the alleged irregularities and cases of maladministration in some of the Provinces. We do not, of course, deny that there have been several failures, but such failures are, as the Simon Commission have pointed out, in no way peculiar to India, and "they can be paralleled at various times in countries with a far greater experience of representative institutions." Nor have they been confined in India to the Transferred Departments. There has not been in the history of Indian administration during recent years such a colossal failure as the Bombay Back Bay Reclamation Scheme, in which Lord Lloyd, who was then Governor, took a personal interest and which has imposed a very heavy burden on the finances of Bombay for many years. We would draw the attention of the critics, who have sought to draw inferences regarding the competency of Indian Ministers from a few failures in local self-government, to the report of the Back Bay Enquiry Committee,\* and also to the reports of the Central Public Accounts Committee, which have brought to light serious irregularities even in the administration of departments not entrusted to responsible Ministers.

14. In the administration of local authorities since the Reforms, Indian Ministers have laboured under serious difficulties which can be traced directly to the attempts to carry out in its fullest implications the recommendation of the Montagu-Chelmsford Report that "there should be the largest possible independence for local authorities of outside control." Before the Montagu-Chelmsford Reforms, there was in India nothing that could be recognised as local self-government of the British type. The principal administrative change that was made as a result of this recommendation in the Montagu-Chelmsford Report and its consequences have been fully described in the following passage from the Simon Commission Report†:—

"The principal administrative change made, in every province except the Punjab, was the substitution of an elected Chairman in almost every district and municipality. This measure, designed to carry out the policy of enlarging the sphere of self-government by removing official control, in fact did far more than this: it radically altered the constitution of the local bodies and their relationship with the Provincial Government. The official Chairman had not merely been the presiding member, but actually the chief executive officer of the Local Board. In administering its affairs, he had never been entirely dependent on the Board's own staff. He combined in his person the authority of the highest revenue and the highest magisterial office in the district, and had in consequence at his command an army of other officials whose services he could and often did utilise in the discharge of his Local Board duties. His functions as Chairman of the District Board merely formed part of a varied complex the constituent part of which fitted in with, and simplified the discharge of each other. His revenue and magisterial work took him to every corner of his charge, and these tours served at the same time to keep him in intimate touch—without any extra expenditure of time, money or effort—with the requirements of local board administration.

"It seems to have been expected that an elected Chairman should not only take the place of the District Officer as presiding member, but should also, without pay and in such time as he could spare from his

\* This Committee was appointed in 1926 by the Government of India to enquire into the Back Bay Reclamation Scheme. It was presided over by Sir Grimwood Mears, Chief Justice of the Allahabad High Court.

† Para. 350, Volume I, Simon Commission Report.

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
THE BRITISH INDIAN DELEGATION.

[Continued.]

own affairs, be the chief executive officer of the Board, with such assistance as he might obtain from an ill-paid secretary, little better than a minute clerk, and from the technical officers such as the engineer and medical officer."

It is not, therefore, surprising that there has been some loss of efficiency in some of the Provinces. The principal defects of the system introduced on the recommendation of the Montagu-Chelmsford Report are, as has been pointed out by the Simon Commission:—

(a) the absence of "a class of skilled professional administrators who, while they follow the policy laid down by the elected representatives, are at once their advisers and the instruments whereby their decisions are put into operation"; and

(b) the absence of a general system of grants-in-aid which in this country have been found to be more effective instruments of control than the exercise of statutory powers by the Central authority.

Political and financial difficulties have stood in the way of reform in local self-government. The development of a system of grants-in-aid has been rendered impossible owing to the extreme financial stringency in the Provinces, for a grant-in-aid is every ineffective as a means of controlling local authorities unless it is substantial. The difficulties as regards the provision of efficient executive officers for the local authorities have been partly political and partly financial. The Collector of the district, who co-ordinates the work of all Departments, is obviously the most appropriate executive officers for the District Board, but so long as the Indian Civil Service is not completely controlled by responsible Ministers, political considerations will stand in the way of this important administrative development. The resources of the local authorities are quite inadequate for the employment of an executive agency as efficient as that which was under the control of the Collector of the district before the reforms. It may be noted in this connection that, as has been observed by the Simon Commission, wherever (as in Madras) a system of grants-in-aid subject to inspection has been adopted, there has been very little loss of efficiency.

15. The difficulties of dealing with local authorities who have been given extensive powers, which in some respects are wider than those possessed by similar bodies in this country or on the Continent of Europe, will be appreciated by British politicians who are acquainted with the history of local self-government in this country in the first half of the 19th century. It is unnecessary for us to remind the members of the Committee of the formidable difficulties which Sir Robert Peel and other British statesmen had to encounter in the last century in reforming the police administration and other local services. Indian local authorities are very jealous of any interference with their newly-acquired privileges, and publicity is the only weapon on which the Central authority can rely. The system of surcharge has during recent years been introduced in several Provinces, and the stricter audit which is now in force discloses irregularities which in the pre-reform days never became public.

The annual reviews of the administration of municipalities and local boards which are issued, it may be noted, under the instruction of the responsible Indian Ministers have also during recent years been of a very critical nature, for it is obvious that public opinion has to be created to some extent before powerful and influential municipalities, such as Benares, can be superseded by an exercise of the statutory powers. It is the extracts from these reviews that have furnished the critics of the White Paper scheme with the material for their press propaganda. The following letter from Sir Alfred



16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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Watson, which appeared in the "Times" of 3rd June, 1933, summarises in a few sentences the true state of affairs:—

"Much is being made by those who oppose advance in India of extracts from the reports of the Provincial Governments on local self-government in India. These are held to be the condemnation of Indian control of Indian affairs. The point seems to be ignored that local self-government is one of the transferred subjects in the hands of Indian Ministers, and that all these censures are those of Indians upon the administration of their own people; that does not support the contention that Indians are indifferent to inefficiency or corruption in Government.

"The level of municipal government in India is low, and has never been anything else, but it is certainly improving under the watchful criticism of the Indians in whose hands its central control has been placed."

*Central Responsibility.*

16. We shall now deal with another contention which is the basis of the schemes put forward both by Mr. Churchill and Sir Michael O'Dwyer. It has been suggested that a scheme of provincial autonomy without Central responsibility would give the responsible executive in the Provinces control over all the vital departments that affect the welfare of the masses and in particular over the so-called nation-building departments. Mr. Churchill stated that the administration of these subjects in vast Provinces should be regarded by the Indian politician as "a majestic task," and that he would not be prepared for a further transfer of responsibility until and unless this great experiment proved a success.

17. We deal elsewhere with the political and administrative objections to the reservation of Law and Order. Apart from political and other considerations, our assertion is that no Minister can accept real responsibility for the development of the nation-building services unless the policy in respect of Central subjects is also determined by a Ministry responsible to the people. The five principal nation-building services are:—

- (a) Education;
- (b) Sanitation;
- (c) Medical Relief;
- (d) Industries; and
- (e) Agriculture.

As regards the first two, it is generally admitted that the only impediment in the way of rapid advance has been finance, for there has been no dearth of either teachers or of qualified medical practitioners in India. As has been made abundantly clear both by the Hailey Memorandum and also by the evidence of eminent administrators like Sir Charles Innes, the financial difficulty arises from the fact that the margin of taxation is now very small and the increased resources necessary for these services can be provided only by a revival and development of agriculture and industries.

Now the principal methods by which the Government can create the conditions favourable to agriculture and industries are:—

- (i) Protective tariff;
- (ii) Development of credit facilities;
- (iii) Transport facilities. (This is of special importance in India since the railway system is owned and very largely managed by the State); and
- (iv) Maintenance of a level of prices favourable for the development of industries and agriculture. (This, of course, is dependent on the currency policy of the country.)

16<sup>o</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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[Continued.]

In other words, the administration of these two departments is vitally connected with, and in fact dependent on, the policy of the Government of India in respect of the tariff, banking, railways and currency, which are, of course, Central subjects. We venture to doubt whether the Minister of any country would be prepared to accept responsibility for the development of agriculture and industries without control over the tariff, exchange and currency policy of that country. It will be the function of the Central Government to create the conditions favourable for industrial and agricultural development by a tariff and currency policy suited to the country and for the Provincial Governments to organise and build on the foundations laid. The prosperity of the agricultural classes, it is hardly necessary to point out, depends not only on the out-turn of their crops, but also on the prices they can secure for the commodities they grow. The results of laborious years of agricultural research and organisation might be completely destroyed by an unsound currency policy. It is superfluous, however, to labour the point at present when stabilization of currency and prices with a view to the revival of agricultural and industrial prosperity is a live issue in most of the countries of Europe and America.

#### APPENDIX B.

##### INDIA'S DEBT POSITION.

1. The following statement shows the debt and other interest-bearing obligations of the Government of India in England and in India, outstanding at the end of 31st March, 1933:—

|   |     | £ Millions. | Rs. Crores. |        |
|---|-----|-------------|-------------|--------|
| (a) In India  |     |             |             |        |
| (1) Loans   | ... |             | 446.9       |        |
| (2) Other obligations (including Treasury Bills, Post Office Savings Bank deposits, Cash Certificates, etc.)... | ... |             | 258.5       |        |
| Total in India  |     |             |             | 705.4  |
| (b) In England  |     |             |             |        |
| (1) Loans   | ... | 315.6       | 420.8       |        |
| (2) War Contributions   | ... | 16.7        | 22.3        |        |
| (3) Capital value of railway annuities  | ... | 47.0        | 62.7        |        |
| (4) Other obligations   | ... | 1.0         | 1.3         |        |
| Total in England  |     | 380.3       | 507.1       | 507.1  |
| Total in India and in England...  |     |             |             | 1212.5 |
| <i>Interest-yielding or productive assets.</i>  |     |             |             |        |
| (1) Capital chargeable to railways  | ... |             | 751.6       |        |
| Other assets including advances to Provinces  | ... |             | 217.3       | 968.9  |
| (2) Cash, bullion and securities in Treasury  | ... |             |             | 36.9   |
| (3) Balance of unproductive debt, not covered by assets   | ... |             |             | 206.7  |
| Total   |     |             |             | 1212.5 |

16<sup>th</sup> Novembris, 1933.] JOINT MEMORANDUM BY  
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[Continued.]

2. From this statement emerge two facts which are of the very greatest importance to every British investor in Indian sterling loans and which cannot be given too much prominence in the political controversy that is raging in this country.

(1) In the first place it will be noted that five-sixths of India's debt is covered by productive assets, which are mainly State railways and irrigation works. We need hardly point out that the new constitution provides for the establishment of a Statutory Railway Board with a view to the management of the Indian State railway system on commercial principles, unhampered by political influences in the day to day administration.

(2) In the second place it will be noted that the internal Rupee debt of India is nearly  $1\frac{1}{2}$  times the sterling debt. An appreciable portion even of the latter is held by Indian banks, insurance companies, and individual Indian investors. It is obvious that any measures of the future Government of India that would affect the stability of India's finances or its credit in England would have serious repercussions on India's internal credit.

3. In this connection a word of explanation is required as to the composition of India's internal rupee debt. Industrial development and investment are still in their infancy in India and the educated middle classes, as in France, invest a considerable portion of their savings in Government securities, post-office savings banks, post-office cash certificates and, in the case of Government servants, the Provident Funds. The following figures indicate the amazing growth of this form of investment, particularly during the last ten years:

|                                 | 31st March, 31st March, |             |
|---------------------------------|-------------------------|-------------|
|                                 | 1923.                   | 1933.       |
|                                 | Rs. Crores.             | Rs. Crores. |
| Post Office Savings Bank ... .. | 23.2                    | 42.6        |
| Cash Certificates ... ..        | 3.1                     | 54.6        |
| Provident Funds ... ..          | 36.1                    | 76.6        |

We have no recent figures of the number of persons who have invested money in the Post Office Savings Bank or the cash certificates, but the Post Office Savings Bank depositors numbered 2,300,000 in 1929. The vast majority of the Government servants contribute a portion from their salary to the Provident Funds, and the number of persons who have invested in Post Office cash certificates also probably runs into millions. These figures are of very great political significance since as is well-known, the upper and lower middle classes are the very section of the population who are most "politically-minded" and among whom nationalist feeling finds expression in its most intense form. Any future Government of India which by its financial indiscretions endangers the financial stability or credit of the country would be very short-lived indeed, since it would have to meet the united opposition of all these classes including the enormous army of Government officers.

4. We must now analyse the unproductive debt (or, as it is sometimes described, the unallocated debt, i.e. the portion of the debt not allocated to any productive assets such as railways) and attempt to discover the circumstances under which the present figure of Rs.207 crores has been reached. In 1914 and 1915 there was no portion of the interest bearing debt which was not covered by actual assets.\* This statement requires

\* This is based on paragraph 32 of the Memorandum on the financial separation of Burma, prepared by Sir Henry Howard and Mr. Nixon.

16° Novembris, 1933.] JOINT MEMORANDUM BY  
THE BRITISH INDIAN DELEGATION.

[Continued.]

some explanation for those who are not acquainted with the mysteries of India's accounting system. The figure of unproductive debt is, as has been observed from the statement in paragraph 2, arrived at by deducting from the total debt of India the amount which is allocated to railways and other commercial assets. The amount debited to one of these commercial departments, as for instance the railways, represents the capital actually expended on construction irrespective of whether the amount so spent was found from loan funds or from current revenues. Thus, when a portion of the surplus revenues was spent on railway construction an addition was made to the railway debt and a corresponding reduction made in the unproductive or unallocated debt. Similarly when sinking fund charges were provided for wiping out the whole debt including the railway debt, the whole of the amount was shown as a deduction in the unproductive debt (except the small portion which by Statute has to be applied towards the reduction of particular items of the debt). For instance, out of the 7 crores of rupees which are annually provided in the Government of India budget for reduction or avoidance of debt, over 5 crores relate to the railway portion of the debt but in the actual accounts the railway debt remains stationary while there is a corresponding reduction in the unproductive debt.

5. Two causes have primarily contributed to the growth of the unproductive debt since 1914-15. These are:—

(a) The heavy deficits in the Indian budgets from 1918-23 amounting to Rs.98 crores largely caused by the abnormal defence expenditure after the Great War.

(b) India's enormous contributions towards the expenditure by Great Britain on the Great War. These contributions amounted to £146.2\* millions at the end of 1919-20. This figure does not include the expenditure on various special war services which have been estimated at £57 millions up to the end of 1921-22. It includes, however, the special war gift of £100 millions which India gave in March, 1917. Of this sum of £100 millions, nearly £75 millions were raised in India by means of the War loans in 1917-18, while as regards the balance the Government of India took over the liability for interest on an equivalent amount of the British Government War loan.

If India's total contributions towards War expenditure and the interest paid on War borrowings had been utilised for wiping out the sterling debt, there would have been little or no sterling debt to-day, for a substantial portion of the debt was incurred before the War, when the rates of interest were very low. Until recently these pre-War Indian sterling securities were quoted at rates very much below par.

We may incidentally refer here to the answer given by the Secretary of State to question No. 8405 put by Major Attlee. He stated that, out of the debt of £100 millions put up by India only about £16 millions were now outstanding. It is true that out of the £25 millions, the liability for which the Government of India took over from His Majesty's Government, only £16 millions are now outstanding, but it is not correct to say that the sum of £75 millions borrowed in India by means of War loans has been repaid. The War loans raised in the years 1914-19 in India were in most cases short-term loans which were converted or repaid by fresh borrowings in the subsequent years, either in England or in India.

\* The figures given in this section are taken from the official publication "India's contribution to the Great War", pages 160-161.



# RECORD X—(contd.)

## 4. Memorandum by Sir Tej Bahadur Sapru, K.C.S.I.

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MEMORANDUM

[Continued.]

BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

1. At the outset I consider it necessary to state my entire position in relation to the White Paper containing the proposals on Indian Constitutional Reform. Having worked at the three Round Table Conferences between 1930 and 1932, and taking a broad view of the Constitutional question, the difficulties and complexities of which I appreciate, I have come to the conclusion that no constitution which fails to satisfy certain essentials will meet the needs of the situation in India, or rally round it a sufficient body of men willing to work it in the spirit in which it should be worked.

2. In my opinion those essentials are:—

(1) Responsibility at the Centre, with such safeguards as in the interests of India may be necessary for the period of transition, to be established, soon after the passing of the Act, without prolonging the transitory provisions contemplated by paragraph 202 of the White Paper.

(2) Provincial Autonomy with necessary safeguards for the period of transition.

(3) The reserved subjects, viz.: the Army, Foreign Affairs, and also Ecclesiastical Affairs, to be under the control of the Governor-General, only for the period of transition which should not be long or indefinite.

(4) A definite policy to be adopted and acted upon in respect of the Reserved Departments so as to facilitate their transfer to the control of the Indian Legislature and the Government within the shortest possible distance of time, compatibly with the safety of the country and the efficiency of administration in those departments.

(5) The constitutional position of India within the British Commonwealth of Nations to be definitely declared in the Statute.

#### ALL-INDIA FEDERATION.

3. The great contribution of the first Round Table Conference in 1930 was the evolution of the idea of an All-India Federation consisting of (a) the Provinces of British India and (b) Indian States, not as an ideal to be attained in a dim and distant future but as the basis of a constitution providing central responsibility to be set up as an immediate result of Parliamentary legislation.

4. In certain quarters it has been suggested that the Princes, present at the first Conference, rushed into agreement without clearly realising the implications of what they were saying and doing, and that during the time that has elapsed since their enthusiasm for the Federation has waned and that many of them are now unwilling or hesitating to join it. No one has put forward this point of view more emphatically than Sir Michael O'Dwyer, in his written statement and oral evidence before the Joint Parliamentary Committee.

"The Federal idea was," says Sir Michael O'Dwyer, "in 1930 welcomed by certain Indian Princes anxious to safeguard their future which they thought threatened by the 1929 declaration about Dominion Status: it was rather hastily accepted by the Government then in power and by representatives of the Liberal Party in the first Round Table Conference as a possible means of securing the Central Government against control by the Congress Extremists." I venture to think that this observation of Sir Michael betrays a regrettable ignorance of what had preceded the Round Table Conference, and does less than justice to the Princes, the Government then in power and the representatives of the Liberal Party, who were

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MEMORANDUM

[Continued.]

BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

present at the First Round Table Conference under the distinguished leadership of Lord Reading, who had retired from the Viceroyalty of India only four years before the meeting of the Conference, and might be assumed to have a knowledge and understanding of the Indian situation. To understand fully what Sir Michael's view is, it is necessary to bear in mind what he said in reply to certain questions put to him by Sir Akbar Hydari, the representative of the premier state of Hyderabad, and Sir Manubhai Mehta, the Prime Minister of Bikaner. After confessing his ignorance of the fact that several Princes had met at a Conference in 1918 and that they had then come to the conclusion that they must work more or less on the Federal ideal, and after admitting that he had not studied that part of the Simon Report which had recommended the immediate establishment of the Council for Greater India, Sir Michael proceeded to explain his views at length. I make no apology for quoting at length the question put by Sir Akbar Hydari, and the answer of Sir Michael O'Dwyer.

Sir Akbar:—

(No. 636)—“I think you will find that practically that is so.”\* “Does it not, therefore, make you alter, to a certain extent, the idea that really the Princes' declaration at the first Round Table Conference, which was repeated with greater and graver emphasis as time went on in successive conferences, was not a sudden outburst of enthusiasm but a realisation of the conditions that were obtaining in India at the time, and the necessity that there was, in their own self-interest, to try to get a constitution on the lines of the White Paper?” “My view is,” said Sir Michael, “that the matter was rushed forward owing to the fact that the Government of India Despatch of the 20th September still regards—and presumably the Government of India were in communication with the Princes—Federation as a distant idea. In a few months, at the first Round Table Conference, the thing is put forward as being something almost immediately feasible. That leads me to think that, although individual Princes and men of great authority and position have given some consideration to it, the great body of Princes had neither the time nor the opportunity to consider it at all, and I am influenced in that view by what was said to me at the very first Round Table Conference by some of the Princes individually. They had neither the time nor the opportunity. That is quite right, but as soon as the time and the opportunity came and they were face to face with this problem, then they thought it over, and they made a declaration. Is that not possible? No. I think a great many of them who thought over it had more and more misgivings about it.”

5. (No. 651)—Sir Michael O'Dwyer was on this point closely examined by Sir Manubhai Mehta also, and for the sake of convenience I quote the whole of his statement in answer to questions put by Sir Manubhai.

In the second paragraph of Part I of his Memorandum, Sir Michael writes: “The Federal idea was, in 1930, welcomed by certain Indian Princes anxious to safeguard their future, which they thought threatened by the 1929 Declaration about Dominion Status?” “Yes.”

(No. 652)—“As regards this remark, may I ask Sir Michael if he had the advantage of a talk with His Highness the Maharajah of Bikaner or His Highness the Nawab of Bhopal, who were exponents of the idea of All-India Federation at the first Round Table Conference? Had he any talk

\* This has reference to the previous question in which Sir Akbar pointed out that the Council for Greater India proposed by Sir John Simon dealt mainly and practically with all those questions with which the All-India Federal Legislature would deal in future.

16<sup>o</sup> Novembris, 1933.]

MEMORANDUM

[Continued.]

BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

with them?" Answer—"Not with His Highness the Nawab of Bhopal. I think I had a talk with His Highness the Maharajah of Bikaner."

(No. 653)—"Did he say he was influenced by the idea of Dominion Status?"—"No, other Princes said so to me."

(No. 654)—His Highness the Maharajah of Gaekwar Baroda, His Highness the Maharajah of Patiala, His Highness the Maharajah of Kashmir, and His Highness the Maharajah of Alwar. Had Sir Michael any talk at any time with those Princes?" "I had talks with all of them except the Nawab of Bhopal, but I am not going to give away any of the names of my informants."

(No. 655)—"Did they say they were in favour of this idea of Federation because they were afraid of Dominion Status?" Answer—"Some of them said when the Declaration was made about Dominion Status they did not realise what their position would be *vis-a-vis* a future British India."

(No. 656)—"The Declaration about Dominion Status was made in 1929?" "Yes."

(No. 657)—"This Declaration about Federation was made in 1930?" "Yes."

(No. 658)—"During that period had Sir Michael any occasion to talk with any of these Princes?" "Yes."

(No. 659)—"Before the Declaration was made?" "No, after the Declaration was made. The only opportunity I had to talk with them was when they came here to the first Round Table Conference."

(No. 660)—"After the Declaration was made Sir Michael had talk with them?" "Yes."

(No. 661)—"But not before?" "I thought you meant the Declaration about Dominion Status."

(No. 662)—"That was made in 1929. After the opening of the Round Table Conference the Princes declared on the very first day that they were in favour of Federation?" "Yes."

(No. 663)—"What was the ground for Sir Michael's belief that they were influenced by the idea of Dominion Status?" "Some of them told me so."

(No. 664)—"After they declared for Federation?" "I do not think all the Princes individually declared for Federation, and, as I say, some who did declare for Federation changed their opinion afterwards, and made no secret of the fact that they did so."

Lord Winterton then asked:

(No. 665)—"Was your answer that those who had declared for independence said so in private conversations?" "No, I am not prepared to specify who they were. I had conversations with most of the Princes. I cannot specify whether it was the time they were here for the first Round Table Conference. Some of them told me that the Declaration in favour of Federation was brought about largely by the Viceroy's Declaration about Dominion Status. I am not prepared to give the names of those who stated that to me."

Sir Manubhai Mehta then asked:

(No. 666)—"How does Sir Michael reconcile that belief with the Declaration of the Princes that they were prepared to come into the Federation only if there was central responsibility and self-government. How are the two ideas reconcilable?" Answer:—"I am not arguing with the rights and wrongs of the case, I am only stating the reasons which some of the Princes gave me for this Declaration that some of the Princes were willing to come into the Federation."



16<sup>th</sup> Novembris, 1933.]

MEMORANDUM

[Continued.]

BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

(No. 667)—“Were the Princes responsible for this Declaration?”  
Answer:—“I am not prepared to be pressed for information as to the particular Princes who gave me their view. I do not think it is fair to bring forward their names, but I know certain of the Princes who declared for the Federation altered their views when they went back to India. They publicly stated so.”

6. It is obvious that Sir Michael O'Dwyer places those who differ from him at a great disadvantage in so far as he states publicly that some Princes expressed to him privately their regret for their hasty action, but is unwilling to give their names, and I would therefore respectfully endorse the view of His Grace the Archbishop of Canterbury, that it was not fair on the part of Sir Michael to put in evidence the statements, which, according to him, were privately made by the Princes. I submit that the repeated statements and declarations of the Princes at their Conferences and meetings of the Chamber of Princes and the repeated assurances given by their representatives at the third Round Table Conference and at the Joint Parliamentary Committee, can lead to one, and only one, conclusion, and that is that not only have the Princes not gone back on their original attitude, but they still adhere to the idea of an All-India Federation. That they have imposed certain conditions from the start of the first Round Table Conference, is perfectly true. Some of these conditions are no longer matters of controversy, while others are capable of adjustment. I quote below a statement which appeared in the “Times” of 6th July, 1933:

PRINCES' SUPPORT OF FEDERATION.”

*Chancellor's Statement.*

“The Maharajah of Patiala, Chancellor of the Chamber of Princes, has sent to Nawab Sir Liaquat Hayat Khan, his Prime Minister, who is one of the States' delegates to the Joint Select Committee, a telegram defining his attitude to Federation, and expressing surprise that there have been allegations throwing doubt upon his support of the policy of his Majesty's Government. His Highness states that his position is clear; since a general agreement (known as the Delhi Pact) was reached between Princes and Ministers in December last, he had adhered to the Chamber's policy in regard to Federation. He adds:

“Please repudiate all suggestions to the contrary. The authorities will, of course, appreciate that our insisting on adequate safeguards for the protection of our autonomy, sovereignty, and financial stability does not mean opposition to Federation. In fact it is in the best interests of India as a whole that the Federation should assure our continued connection with the British Crown and stability in the Centre, to the safeguarding of Imperial as well as Indian States Interests.

“Under the Delhi Pact, in the shaping of which the Rulers of Patiala, Bikaner, and Bhopal took part, existing differences were adjusted between the two sections—Federationists, and Confederationists. The Princes were unanimous in reaching a common policy in favour of joining an All-India Federation, subject to certain essential safeguards being provided in the new Constitution, through Confederation among such States as desired to adopt that method, while leaving the door open to others to join the Federation direct.”

7. If I have given so much space to Sir Michael's views on this matter, it is because I treat him as representing a number of public men in England

16<sup>th</sup> Novembris, 1933.]

MEMORANDUM

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who have expressed more or less identical views in Parliament or on public platforms, and in the press, and I am only anxious to point out that their views are neither correct nor fair to British India or to the Princes.

8. I shall now give a few facts in historical sequence to show that the idea of the Federation was not suddenly sprung upon the Princes or British Indians at the time of the first Round Table Conference:—

(a) The Simon Commission was appointed on 27th November, 1927, and visited India between 1928 and 1929, and submitted their Report in May, 1930.

(b) I shall invite the attention of the Committee to Vol. 2 (Part VII), pp. 193-206, of the Simon Commission Report. On page 193 they say: "It would be more true to say that there is really one India, but that the unity of India includes the Indian States as well as British India"; and then they quote from the earlier Report of Mr. Montague and Lord Chelmsford as follows:—

"India is in fact as well as by legal definition one geographical whole. The integral connection of the States with the British Empire not only consists of their relations to the British Crown, but also in their growing interest in many matters common to the land to which they and the British Provinces alike belong." The Report then goes on to say: "Whatever may be the future which is in store for British India, it is impossible to conceive that its constitutional developments can be devised and carried out to the end, while ignoring the Indian States. It is equally certain in the long run, that the future of the Indian States will be materially influenced by the course of development in British India. The Indian Princes have not been slow to acknowledge that their interest in the constitutional progress of British India is not that of a detached spectator, but of fellow-Indians living in a world which, for all its history of deep divisions and bitter rivalries, preserves in some respects remarkable cultural affinities, and is slowly working out a common destiny." It was for these reasons that in October, 1929, the Commission addressed a letter to the Prime Minister and drew attention to the importance, when considering the direction which the future constitution of India is likely to take, of bearing in mind the relations which may develop between "British India and the Indian States." "The Commission recommended the examination of the relationship between these two constituent parts of Greater India, and further recommended that a Conference should be called to which representatives of both British India and the Indian States should be invited." This was in October, 1929. In the same month, Lord Irwin, the Viceroy of India, returned from England to India and made his famous announcement with the full authority of His Majesty's Government, that a Round Table Conference would soon be held. The Commission in their Report published in May, 1930, expressed their pleasure that such a Conference was going to be called. For obvious reasons, the Commission could not make any concrete proposals for the adjustment of the future relationship of the two constituent elements. The Indian States had not during their visit to India put forward their own views, and they accordingly welcomed the prospect of an exchange of views at the Round Table Conference. (Simon Commission Report, Vol. 2, p. 194.) In paragraph 228 of their Report the Commission quote an important statement of His Highness the Maharajah of Bikaner to the effect that "the Princes have openly given expression to the belief that the ultimate solution of the Indian problem and the ultimate goal—whenever circumstances are favourable, and time is ripe for it—is Federation, which word has no terror for the Princes and Government of the States." The Commission then refers with approval

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to the language of caution of the Butler Committee, which, pursuing the line of thought adopted in paragraph 300 of the Montague-Chelmsford Report in 1917-1918, gives a warning against the danger of trying to advance in the direction of Federation too fast.

(c) In paragraph 231 of their Report they actually discuss the form of the ultimate Federation, and in paragraph 234 they observe that "Federations come about only when the units to be federated are ready, for the process, and we are far from supposing that the Federation of Greater India can be artificially hastened, or that, when it comes, it will spring into being at a bound." They say that "what is now needed is some organ, however rudimentary, which will for some purposes, however limited, address itself to the treatment of matters which are of common concern to the whole of Greater India, not from the side of the Indian States alone, nor solely from the side of British India, but from both."

They then put forward in paragraph 237, their proposals for the establishment of the Council for Greater India—"a Consultative body having no executive powers, intended to make a beginning in the process which may one day lead to Indian Federation."

(d) The next important State document, in which the ideal of an All-India Federation is discussed, is the Despatch of the Government of India, bearing date, September 20, 1930. Like the Simon Commission, they envisage the Federation as a distant ideal which "cannot be artificially hastened" (vide paragraph 16, p. 11, of the Despatch). The Government of India then go on to recommend "the provision for the Council of Greater India consisting of not less than 60 members, of whom about 20 might be representatives of the States."

(e) Referring to the treatment of the question of Federation in his Report, Sir John Simon said in the course of his speech in the House of Commons, on March 28, 1933 (vide Parliamentary Debates, House of Commons, Vol. 276, No. 59 at p. 89) that the Indian States were outside their reference, and that the Commission "have not taken evidence from any Indian States. No Indian Princes came before us. No Minister from any one of these great countries, some of which are as big as some of the smaller countries of Europe, came and offered his views." Sir John Simon then quotes from the speech of H.H. the Maharajah of Patiala, the Chancellor of the Chamber of Princes, who spoke not for himself alone, but for a large body of Princes whom he had consulted. The Maharajah had said at the Conference:

"The main principle of Federation stands acceptable, and I echo the confident hope expressed the other day by His Highness the Maharajah of Bikaner, that by far the larger proportion of the States will come into the federal structure at once, and that the remainder will soon follow." Sir John Simon thought that this might be too sanguine a view, but he proceeded to draw particular attention again to the following words of the Maharajah of Patiala:—

"We have all made it clear, however, that we consider certain things to be essential. We can only federate with a British India which has self-government and not with a British India governed as it is at present. This is a sentiment to which repeated expression has been given by other Princes and their Ministers at all the Conferences, and the Joint Parliamentary Committee."

(f) I shall now refer to another public document, though not of an official character. In 1928 the All-Parties Conference in India appointed

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a Committee to examine and report on the various constitutional proposals then engaging public attention, and it submitted a report generally known as the Nehru Committee Report. In the Report it is stated that "if the Indian States would be willing to join such a federation (i.e., a perpetual union of several sovereign States) after realising the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges."

(g) I have been at pains to show that the ideal of Federation had been engaging the attention of British Indians and Indian States for some time, and that it had not been absent also from the mind of certain important and high placed English statesmen even before the Simon Commission came to discuss it in their Report. No doubt there was a good deal of clearing of ideas which remained to be done, and this could only be achieved by a Joint Conference of His Majesty's Government and the representatives of British India and the Indian States. This opportunity was afforded by the Round Table Conference held in London in 1930. There would thus seem to be no justification for the suggestion that the Indian Princes hastily agreed to join the Federation because, as suggested by Sir Michael O'Dwyer, they wanted to protect their position against the possibility of British India achieving Dominion Status which was foreshadowed in the announcement made in 1929 by Lord Irwin. If the representatives of British India accepted it as a feasible basis of advance in 1930 at the Conference, it was because they realised that (a) it would lay the foundation of Indian unity, (b) it would provide an effective machinery for protecting common interests and minimising the chances of friction between the two sections of India; (c) it would, by supplying a stable element in the Indian Constitution, allay the apprehensions in the minds of British statesmen in respect of changes to be brought about in the character and composition of the Central Government in India, and (d) it would promote the cause of progress and constitutional advance in the Indian States themselves.

9. Whether the time for the establishment of the Federation of All-India has come, or whether it will arrive after the Provinces have become autonomous units and developed what is called "provincial self-consciousness", is a question which may now be dealt with briefly. In my humble judgment the analogy between British India as it now is, and Canada and Australia as they were at the time of the establishment of Federation in those countries, is not sustainable. British India already possesses a Central Government. The problem in India is not to create a Central Government there for the first time, but to alter its character and divide its functions and powers from those of the federating Provinces and the States. This problem did not, so far as I know, exist in Canada or Australia at the dates of the establishment of the Federal Governments in those Dominions. Whether, therefore, the Federation is established now or after some time, the whole structure and sphere of action of the Central Government will have to be altered. It is not quite clear what precisely is meant by "provincial self-consciousness". In point of fact the provinces in India have been existing as separate units practically since the beginning of British rule, though they have been under the guidance of the Central Government, and in the last 40 years, during which representative institutions have been more or less developed, they have in their administrative and economic life developed a consciousness which has at times been a source of great embarrassment to the Central Government—particularly in



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the field of finance. While in certain branches of administration, e.g., civil and criminal laws and their administration, there has been uniformity nearly everywhere, in certain other matters of a local character, such as land tenures, agriculture, local self-government, education, excise, industries, etc., each province has maintained and developed its local peculiarities, and has thus become self-conscious. The fact is that the Provinces have already developed a life of their own, and that the real point is not that they have not developed individual self-consciousness, but that in some cases there has been for some time a marked tendency towards too much of a provincial or local outlook. Quite apart, therefore, from the financial pre-requisites such as the Reserve Bank, the credit and stability of the finances of India, which will be noticed later, I think that the political conditions necessary for the association of the provinces into a Federation already exist and the legal machinery for effectuating this purpose can only be provided by parliamentary legislation. On the other hand, I very strongly apprehend that in a country like India with so many provinces, the danger of leaving it to the newly constituted legislatures of the Provinces to exercise their option in joining or not joining the Federation, ought not to be overlooked. One single province, if left to itself, may hold up the progress of the entire country, a contingency which I think will be most disastrous in the circumstances of India. Further, to create autonomous provinces with responsible government functioning in them, and to link them up to a Centre which is to continue to be responsible to British Parliament, will only tend to frustrate the object of those who believe in the necessity of a strong centre, and may seriously lead to the breaking up of that unity of India, which it has taken more than a century to build up. Autonomous provinces may, and probably will prove too strong for an unreformed Centre. An arrangement of this character will, it is apprehended, promote friction instead of co-operation, between province and province, and between provinces on one side, and the Centre on the other. Lastly, an unaltered Centre will be the object of concentrated attack in British India; it will have no moral backing in the country, and instead of playing the part of a unifying factor, will be treated as a rival standing in the way of the provinces.

10. At this stage, I think it will be convenient to deal with some aspects of the All-India Federation, which have formed the subject of criticism both in India and in England. It has been said that the proposed Federation is unnatural owing to the difference in the character and structure of the two constituent elements, viz., (a) the Provinces of British India which have a framework of representative institutions, and responsible government, however restricted in its scope, and operation, and (b) the Indian States, which are governed autocratically and have no such institutions as British Indian Provinces possess.

I would point out that some Indian States, particularly those in the South, already possess representative institutions, though there is much room for their development. Others are showing a tendency to move towards constitutional forms of government, and nearly everywhere in the Indian States there is an awakening among their subjects who are urging their rulers to associate them with internal administration. Public opinion in British India distinctly and strongly favours a substantial advance in Indian States towards constitutional forms of government, and I think I am right in saying that the Princes and their Ministers are keenly watching the signs of the times. I do not wish to impose my views on the States, and even if I wished to do so, I could not.

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11. I am strongly of the opinion, however, that one result among others of the association of British India and Indian States in the field of common activity in the Federal legislature, will be to facilitate the passage of the Indian States from their present form of autocratic government (I use the expression in no offensive sense) to a constitutional form with the rights of their subjects defined, ascertained, and safeguarded. It will be noticed that during the proceedings of the Round Table Conference we made appeals to their Highnesses and the replies given by His Highness the Maharajah of Bikaner, and His Highness the Nawab of Bhopal, though lacking in precision, may well be treated as holding out a hope for the future. It has next been urged in British India, and also in England, that the presence of the nominated representatives of Indian States in the two Chambers will introduce an element of a markedly conservative character, and will practically be a substitute for the present official bloc in the Indian legislature. I do not wish to minimise or ignore the weight of this criticism, or the anomaly of the position, but, having considered it carefully and dispassionately, I have come to the conclusion that the risks of this bloc generally acting as an impediment in the way of British India are not by any means great. At any rate, they are not of such a grave character as to justify us in rejecting the All-India Federation on that ground alone. In the first place I cannot believe—and there is no warrant for such an assumption—that all Indian States representatives will think alike; secondly, I think that differences caused by regional and economic interests are bound to lead to diversity in policy and action among the representatives of the Indian States; thirdly, I would draw attention to the list of Federal Subjects in Appendix VI. The Federation being limited to subjects 1-49 in List I of Appendix VI, the Indian States bloc cannot perform the functions of the present official bloc in respect of those matters in which Indian opinion and official opinion in British India are usually ranged on opposite sides.

12. I do not wish to disguise the importance from the Indian point of view of some legislation which may be introduced at the instance of the Governor-General. Bearing in mind this contingency, I have, from the start, proposed that the representatives of the Indian States should not take part in legislation or other proceedings in the Federal Legislature which affect purely British Indian matters. So far as the attitude of the Princes themselves is concerned, it was very expressly stated by the Nawab of Bhopal at the second Round Table Conference. During the course of the discussion on the 28th of October, 1931, at a meeting of the Federal Structure Committee, His Highness the Nawab of Bhopal said: "May I make the position of the Indian States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British India." A similar statement was made by His Highness the Maharajah of Bikaner. There being no reference to this matter in the White Paper, the question was raised at a meeting of the Joint Parliamentary Committee, and it was urged by some of us that there must be a statutory provision to the effect that no member of the legislature appointed by the Ruler of an Indian State shall vote upon any Bill or Motion affecting the interests of British India alone, and being outside the list of Federal subjects as mentioned in Appendix VI, of the White Paper, and that the decision of any question as to whether it affects the interests of British India alone, and is or is not outside the list of Federal subjects, should be left to the Speaker of the House. The representatives of the Indian States took time

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to make a considered statement, and accordingly Sir Akbar Hydari made a statement on the 30th May, 1933, which I quote below:

"We want to declare that the policy of the States is, as it has always been from the beginning, not to desire intervention in any matter affecting British India alone.

"At the same time we have also declared that the Indian States have an equal interest, as members of the Federation, in the existence of a strong and stable executive, and, therefore, they may have the right to speak and vote whenever such a question arises.

"If the scheme of the White Paper is carefully studied, then, provided the matter is left to the good sense of the parties, starting with a gentleman's understanding, and developed in practice into a well-understood convention, this two-fold object will be attained without endangering either of the principles which we have laid down at the outset.

"The Round Table Conference in its successive sessions refrained from laying down a rigid formula, partly because of the difficulty of framing one which would not overlap the limits in either directions, and partly because it was felt that this was a matter which could be suitably left to a convention.

"We therefore appeal to our friends on the other side to rest content with the declaration we have made."

I should like to draw attention to the fact that when Sir Hari Singh Gour asked whether Sir Akbar Hydari intended that the States were to be the sole judges of when their representatives were to speak and vote, Sir Akbar said that that was his intention.

13. I recognise the objection to what is called the in and out system, and I also appreciate that a rigid provision of this character may prevent the growth and expansion of Federation in future. Taking all the practical difficulties into consideration, I think, however, that provision should be made for a written convention or rule on the subject meeting the point of view I have argued above. It is obvious that in the absence of such a written convention, even a few of the representatives of States might by their conduct prevent the convention from coming into existence at all. It seems to me, therefore, necessary that a reference to this rule should be made in the Treaties of Accession. The rule framed should give power to the Speaker to decide the question as to whether a particular matter is one affecting British India alone.

In this connection I would also draw attention to the statement made by Mir Maqbul Mahmood a representative of the Chamber of Princes, in the course of his evidence before the Joint Parliamentary Committee, which does not seem to me to be quite consistent with the statement made by Sir Akbar Hydari. I quote that statement below:

"On this question also the views that I have to put on behalf of the Chamber of Princes' Delegates and other States' Delegates present at that meeting are that it would have to be left to somebody like that to interpret, but I have no specific instructions from the Chamber."

The following questions put by me, and the answers given to them by Mir Maqbul Mahmood, are important, and may well be quoted at this place.

*Question:* "Then I take your position to be that you are opposed to a statutory provision prohibiting Indian States' Delegates from taking part, but you are not opposed to a convention?"

*Answer:* "No".

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*Question:* "If you are not opposed to a convention, will you please tell me how it is possible to prevent, even two or three or four of your representatives from breaking that convention, and never allowing that convention to come into existence unless we have some rule on that point?"

*Answer:* "I have already submitted that this question was considered by the Chamber of Princes' Delegates, and some of the States' Delegates who were present at that meeting, and it was there thought that something in writing in the rules would be desirable, but the Chamber of Princes has given no instructions on this specific question."

*Question:* "You remember that it was said in the Statement—I am speaking now from recollection, and if I am wrong I hope you will correct me—or rather in answer to a question put by Sir Hari Singh Gour, that the Indian States' Delegates will be the sole judges as to when they shall interfere and when they shall not interfere. Would you stand by that statement, or would you rather leave that matter to be decided either by the speaker or by some other independent body, such as a Committee of Privileges of the two Houses?"

*Answer:* "On this question also the views I have to put on behalf of the Chamber of Princes' Delegates and other States' Delegates present at that meeting are that it would have to be left to somebody like that to interpret, but I have no specific instructions from the Chamber."

If, therefore, proper care is taken to lay the foundation of such a convention, its growth can be left to the future. I fear, however, that if no provision is made in this behalf, the apprehensions of British India will not be allayed.

14. I would, however, urge that while on the one hand I would not, in view of the peculiar conditions of Federation, object to their Highnesses nominating such representatives as they might think fit, I could not agree to their nominating those officers who are really servants of the Crown, but whose services have been temporarily lent to States.\* To do so will, in my opinion, amount to defeating the provision of the Statute that persons holding any office of profit under the Crown should be ineligible for membership of the Legislature, and the observance of this rule in the case of Indian States is all the more necessary in view of the objection to the presence of an official bloc in the Legislature.

15. I presume that ordinarily the Indian States will be represented in the Executive, that is to say, one or two of the portfolios will be filled by the appointment of such representatives of the Indian States as may be willing generally to support the policy of the leader who is called upon to form a Ministry. Once the Ministry is formed, with the inclusion of representatives from the Indian States, the Ministers will no doubt act collectively, and if the Ministry is defeated by the Legislature on a point which the Prime Minister considers of a vital character, the entire Ministry, including the representatives of the Indian States, will resign.

As the Federal Government will be the government both of the Indian States, and of British India, it is desirable that when an attempt is made to extinguish the life of the Ministry by a direct vote of no-confidence, the representatives of British India, and of the Indian States alike, should take part in the proceedings of the Legislature. On the other hand, if on a purely British Indian question the Ministry is defeated, and the Prime Minister feels that he has lost the confidence of the British Indian section of the Legislature, and that it will be impossible for him to carry on the

\* See on this point the evidence of Sir Samuel Hoare.



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administration without their support, he should be left free to resign. In other words, the ordinary Parliamentary procedure should be pursued until a direct attempt is made to overthrow the Ministry of the day. I do not anticipate any such difficulty in regard to the Budget, as the Budget will be a joint one in which both British India and the Indian States will be equally interested.

I realise that occasions may arise, especially in matters relating to taxation, when it may be sought to impose a burden on British India alone, and the representatives of the Indian States may be prepared to support the Ministry of the day. In a case of this character it would be obviously unfair for the Government of the day to turn the scale in their favour by depending upon the support of the representatives of the Indian States. If an occasion of this character should arise we should leave the contest to be fought out between the Government of the day and the representatives of British India alone, leaving it to the Prime Minister in the event of a defeat to exercise or not to exercise his option of resigning according to his estimate of the situation.

16. I cannot, however, agree to the Upper Chamber exercising co-equal powers in the matter of supply. Apart from the fact that the participation of the Upper Chamber in the matter of supply will probably be wholly opposed to British Parliamentary practice, and the present law in India, I desire to point out that the Lower Chamber itself, according to the proposed constitution, will consist of 33½ per cent. of representatives of the Indian States, who will, so far as I can see, for some time to come, not be popular representatives coming through the open door of election, and the Upper Chamber will consist of two classes of representatives, namely, British Indians, who will be elected by the Provincial Legislatures, and representatives of the Indian States, who will be a nominated bloc. It seems to me, therefore, that to allow the Upper Chamber the right of voting supply will amount to overloading the constitution with conservative influences, and may conceivably have the effect of making the Executive irremovable.

17. I notice with satisfaction that it is intended to provide that it will be the duty of the Ruler of a State to secure that due effect is given within his territory to every Act of the Federal Legislature, which applies to that territory. Proposals 128 and 129 of the White Paper seem to me to be of a consequential character, flowing naturally from proposal 127. It is obvious that in regard to Federal subjects of administration the Governor-General must have the power by inspection or otherwise to satisfy himself that an adequate standard of administration is maintained, and that the federating States are carrying out the Federal purpose. The words: "through the agency of State authority" were no doubt a concession to the sentiment of the States. I think that in fairness the States cannot have any reasonable objection to the Federal agency being empowered by the Governor-General for the purpose of implementing the decisions of the Federal authority, if and when a particular State refuses to carry out such decisions, or is unable to carry them out in the spirit in which they should be carried out.

18. There remain now two important questions to notice. The first is the question as to whether in the event of only 51 per cent. of the Indian States coming in they will be entitled to any special considerations in the matter of their voting strength, and the second is Federal finance.

19. As regards the first question, it will be noticed that paragraph 12 of the Introduction to the White Paper provides that "so far as the States are concerned, His Majesty's Government propose as the condition to be

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satisfied before the Federal Constitution is brought into operation, that the Rulers of States, representing not less than half the aggregate population of the Indian States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, shall have executed instruments of accession. If this condition regarding the representation of States representing not less than half the aggregate population of the Indian States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, is fulfilled but the number of acceding States does not exceed 51 per cent. at the date of the inauguration of the Federal Constitution, then the question will arise as to whether the acceding States will be entitled to their full quota of 100 per cent. The question will not probably be of much political importance, as it is anticipated that if once the bigger States offer to join, others will follow their lead. It is, however, necessary to arrive at some decision on this point, and to provide for such contingency as may arise. I submit that the most regular and proper course to follow would be to leave the remaining seats unfilled, and to allot the unfilled seats in future to such States as may at a later stage desire to accede to the Federation. It has, however, been suggested that the residue should be placed at the disposal of the Crown, and that the Governor-General should be empowered to nominate persons out of that residue. In my opinion, nominations by the Governor-General will have a most demoralising effect on the Constitution, and will be, I apprehend, strongly resented both by British India and the Indian States. British India will strongly resent this nominated bloc, and the Indian States will not treat such nominated members as their representatives. Two alternatives have been suggested: one is that in the event of only 51 per cent. of the Indian States coming in at the start, a higher value should be put upon their voting strength; and the other is that the acceding States should be allowed to nominate a larger number of members than they would be entitled to on the basis of the quota reserved for them.

20. If one need choose between these two alternatives, I would prefer the latter, on the distinct understanding that it will be only a temporary arrangement, and that rules will be framed on the subject so as to provide for a State vacating the seats in excess of its proper share in favour of a fresh incoming State. Further, it would be obviously unjust to British India to give to the acceding States the full 40 per cent. of the seats reserved for the entire Indian States bloc, when the acceding States may represent only 51 per cent. or a little more of their total number. The weightage, if it is to be given as a necessity of the situation, should be very moderate.

#### RESPONSIBILITY AT THE CENTRE.

21. In paragraph 2 of this memorandum, in enumerating what seemed to me to be the essentials of the new constitution, I referred to responsibility at the Centre, with such safeguards in the interests of India as may be necessary for the period of transition. I would emphasize that such responsibility should be established soon after the passing of the Act, without prolonging the transitory period contemplated by paragraph 202 of the White Paper. The period of transition between the establishment of the New Constitution in the Provinces and the inauguration of Central responsibility,

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should be of the briefest possible duration. And the composition of the Executive Government consisting as it does of the Governor-General and Members of the Executive Council appointed by the Crown, and their relation to the Legislature, should be as little interfered with as possible. The adjustments in the relations of the Centre and the responsible Provincial Governments should, I submit, rest on a very temporary basis, and the power of the Central Legislature should not be whittled or reduced during the period of transition.

22. To my mind, public opinion in India will not favour or reconcile itself to a constitution which seeks to establish Responsible Government in the Provinces, without a simultaneous or nearly simultaneous change in the character and composition and powers and duties, of the Government and Legislature at the Centre. On the merits of the question too, it would be extremely undesirable to change the character of the Provinces and leave the Centre unaltered. If such a result should ensue, I should have no hesitation in considering our labours at the three Round Table Conferences as wasted, and the best intentions of His Majesty's Government frustrated. I think it is necessary to sound a note of warning that I have considerable doubt as to whether any organized political party in India would be prepared to work such a constitution.

23. I hold very strongly that Provincial Autonomy by itself will have the certain effect of weakening the Centre. It cannot be seriously maintained that the Centre as at present constituted is a strong Centre. The Government of India consists of the Governor-General and seven members of the Executive Council, including the Commander-in-Chief. Three of these members are Indians, of whom one has, during the last ten years, been a member of the Indian Civil Service or the Indian Finance Department. The Assembly which is the Lower House has an overwhelmingly large majority of elected members, there being in it an official nominated bloc consisting of about 26 members. The Council of State consists of 60 members, of whom the non-officials, including nominated members, constitute the majority. The Assembly, however, is not responsible, and the Executive is irremovable. Except in those matters which are by Statute not open to discussion, or which are not subject to the vote of the House, the Assembly can raise any question by way of debate, and can exercise its voting power. The relations of the Legislature, constituted as it is and possessing as it does a large elected majority, without any constitutional responsibility resting upon its shoulders, and the Executive which is irremovable by that Legislature, but is answerable for its conduct to Parliament, cannot be and have not been very harmonious. In actual practice it has not unoften happened that the Legislature has refused to support proposals put forward by the Government, or to grant some of their demands and even to pass the votable portion of the Budget. In the circumstances existing in India, which only tend to foster a sense of political struggle and restlessness, the Legislature is apt at times to be affected by some strong currents of thought in the country, and this cannot be conducive to harmonious relations between it and the Executive. Incidentally, the present state of things is wholly detrimental to the growth of a compact party system or even well defined groups based on differences of an economic and social character. The present system, is, in short, not calculated to foster or encourage that sense of responsibility which can only arise if it is felt that the effect of a particular decision may be to throw out the Government of the day, and to transfer to other shoulders the responsibility for implementing it. On the other hand, the existence of an overwhelming majority of elected

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members has at times compelled the Government to accept compromises which it would not have done if it knew that it had a party to support it. These differences which have arisen between the Government of India and the Legislature have not tended to strengthen the position of the Government in the eyes of the public; on the contrary, they have weakened their position and affected their prestige in the public eye. An irremovable Executive may survive repeated defeats by an irresponsible Legislature, but it can do so only at the cost of its moral hold upon public opinion. In this connection I would invite the attention of the Committee to the valuable evidence of Sir John Thompson. In the Memorandum submitted on behalf of the Union of Great Britain and India by Sir John Thompson, Sir Alfred Watson and Mr. Villiers to the Joint Select Committee, they say:—"The present position is not satisfactory, with a responsible Legislature and an irremovable Executive." It was further developed by Sir John Thompson in the course of his oral statement to which I would invite attention. Sir Charles Innes, who retired only a few months ago from the Governorship of Burma, and who was before that a very distinguished member of the Viceroy's Executive Council, and to whose Memorandum I attach the very greatest importance, thus expresses himself on this point. "His Majesty's Government announced" observed Sir Charles, "that it was their intention gradually to introduce responsible government into India, and the Government of India Act, 1919, was the first instalment of that promise." "Some 6,000,000 people were enfranchised. Partial responsibility was introduced in the Provinces, and though the principle of responsibility was not admitted at the Centre, the Executive Government was confronted by a Legislature enjoying large powers. The results were what might have been expected. The transitory stage is always a difficult stage. Incomplete self-government is the most difficult form of government. It is always, so to speak, reaching out to fulfil itself. Canada in the first half of the nineteenth century offers in some respects a parallel to the India of to-day. There was an irresponsible Executive confronted by a powerful Legislature, and Canada had its own communal problem in the rivalry between the French and English Canadians. The effects of these factors were much the same as those which have manifested themselves of recent years in India. There was a tendency towards irresponsibility on the part of the Legislature. The tension between the French and the English Canadians increased, and there was a growing bitterness against the Home Government. Finally, there was a rebellion, and it was only Lord Durham's Report which saved Canada for the Empire. He recognised that responsibility was the only real remedy for the situation that had arisen. History is repeating itself in India to-day, and much the same phenomena can be seen. The ferment has been immensely increased by the first instalment of self-government. We have set every person in India who understands the matter at all thinking about political advance. It has become an obsession with almost all educated Indians, and they feel that the honour and self-respect of India are bound up with it. As the Indian Statutory Commission put it, there has grown up a 'passionate determination among the politically-minded classes of Indians to assert and uphold the claim of India as a whole to its due place in the world.' There is in India to-day a real nationalist movement, concentrating in itself all the forces which are aroused by an appeal to national dignity and national self-consciousness. Then again, communal feeling between Hindu and Muslim is more acute to-day than it has ever been before, and finally during the last 12 years racial feeling against the British has increased in India. Politically-minded Indians tend to believe that the British are standing in the way of their



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legitimate aspirations, and that we do so because in our own interests we are reluctant to give up our hold on India."

24. I have ventured to quote this long extract from the valuable Memorandum of Sir Charles Innes, as it presents a picture of the present position of India with great fairness and moderation. No one can know better than Lord Reading during whose term of office Sir Charles Innes was a member of the Executive Council, and Lord Irwin, during whose term of office Sir Charles was Governor of Burma, that he was an officer of the greatest distinction, who was always respected for his soundness of judgment and for his understanding of the administrative and political problems of India. Sir John Thompson had a long experience of the Punjab, where he was Chief Secretary of the local Government in the time of Sir Michael O'Dwyer. He then came to the Government of India as Political Secretary, and ended his career only a few months ago as Chief Commissioner of Delhi. The experience of these two recently retired members of the Civil Service, and their reading of the situation in India, and particularly their knowledge of the movements which have stirred the minds of the Indian masses is almost up-to-date. And I believe that these two distinguished members of the Indian Civil Service may be taken fairly to represent a considerable body of opinion among those members of the Indian Civil Service who have recently retired. I would also in particular draw attention to the list of names of the members of the Union of Britain and India submitted by Sir John Thompson. Among these names are the names of two of the successors of Sir Michael O'Dwyer, viz.: Sir Edward Maclagan and Sir Geoffery de Montmorency, the latter of whom retired only about three months ago. I have therefore no hesitation in saying that Sir Charles Innes and Sir John Thompson are entitled to speak about the India of 1933 much more accurately than Sir Michael O'Dwyer, who retired in 1919, and who has never had direct or personal knowledge of the working of the Montagu-Chelmsford Reforms, or the changed mentality of the people since the inauguration of these reforms. I would further invite the attention of the Committee to the letter signed by men like Sir Richard Burn, Sir Selwyn Fremantle, Sir R. Oakden, Mr. S. R. Daniels and others, all of whom have lived in the U.P., and also to the opinions of Lord Meston. These were put by me to Sir Michael O'Dwyer, who did not agree with them, and expressed the opinion that in recent years Indian Civil Servants have given more time to politics than to administration—an opinion which I think will not be readily endorsed by others, and is not at any rate in my judgment at all true. To give therefore the Provinces autonomy and to retain for the Centre a sort of general control over the field of provincial administration, cannot, in my opinion, be anything but a mockery of provincial autonomy. It is difficult to conceive of responsible autonomous Governments working in harmony and co-operation with a Centre which is responsible only to British Parliament—a Centre which is still further enfeebled by the autonomy of the Provinces. I feel so strongly on this question that I have little hesitation in saying that if the Centre is not to be a responsible Centre, but is to continue to be responsible to British Parliament, and to be under the control of the Secretary of State, I would much rather postpone all changes in the Provinces until those who hold different views can be convinced of their error.

25. It is possible that the advocates of a strong Centre may suggest a reduction in the size of the Legislative Assembly, and the curtailment of its powers, and the adoption of an indirect method of election with which I shall deal at a later stage of this memorandum. Public opinion in India

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will never reconcile itself to any such action, and I very seriously apprehend that if any such thing is done it may easily jeopardize the working of the constitution even in the Provinces.

#### FEDERAL FINANCE.

26. The question of the federal finance still remains to be settled finally and effectively. Repeated enquiries have been made into this subject by Committees appointed by the Round Table Conference and through departmental Committees. I do not wish to refer at length to the contention of the Indian States that they already make a very substantial contribution to the revenues of the Government of India. I am fully aware of their contention regarding customs and the contributions which they claim to make for the defence of India by maintaining troops. They also claim that they are entitled to credit for the revenues of the territories surrendered or assigned by them, in the accounts of the federal finance. These are questions on which there has been a considerable difference of opinion in the past, and I fear that complete agreement on these questions between British India and the Indian States is not very easy to achieve. It is to be regretted that the Indian States have declined to agree to the imposition of Income Tax in their territories, and that some of them are opposed even to the imposition of Corporation Tax. No one can, however, deny that in any system of federation it is vitally necessary that each unit should make a fair contribution to the federation to enable the common purpose of the Federal Government to be carried out. It is really the application of this principle which presents difficulties. In this connection attention may be drawn to paragraph 56 of the Introduction to the White Paper, and Appendix VI of the proposals. The more important heads and sources of revenue described therein are (1) Import duties—(except on salt); (2) Contributions from Railways, receipts from other Federal commercial undertakings; (3) Coinage profits and shares in profits of Reserve Bank; (4) Export duties—(in the case of export duty of jute, at least one-half of the total proceeds must be assigned to the producing units); (5) Salt; (6) Tobacco excise; (7) Cotton excise duties; other excise duties (except those on alcoholic liquors, drugs and narcotics); (8) Terminal Tax on goods and passengers; (9) Certain stamp duties. It will be noticed that the power of Legislature in regard to all these heads of expenditure is exclusively Federal. In regard to other Excise duties, it will be observed that the revenue proceeding from them is Federal, with power to assign a share of the whole unit, and that in respect of the last two items they are to be provided with power reserved to the Federation to impose a Federal surcharge. On the whole, the arrangement arrived at at the last Round Table Conference was fair, and the provision in the concluding portion of paragraph 56 that the Governor-General will be empowered to declare in his discretion that any specified source of taxation should be Federal, is particularly important.

27. Paragraph 57 deals with taxes on Income. Corporation Tax is to be wholly Federal, though, as stated above, some States are now raising an objection to this. It will be perceived that this tax is to be contributed by the federating States after ten years. All legislation regarding other

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taxes on Income will be Federal. Receipts from such taxes on officers in Federal service, and taxes attributed to the Chief Commissioners' Provinces, or other federal areas, will be Federal reserve. The Federal Legislature will be empowered to impose surcharge on taxes on Income, the proceeds of which will be retained by the Federation, and the Federal States are to contribute to the Federal reserve proportionate amounts. The remaining net proceeds other than those produced from the Federal surcharges referred to above are to be divided between the Federation and the Governors' Provinces, 10 per cent. being assigned to the former, and the remainder to the latter. It is in regard to this unknown quantity that further technical investigation was said to be pursued. At this stage it is not possible to say what the result of such investigation has been—as mentioned above, it is objected to by some States—but attention may be drawn to what is stated in paragraph 58. We are told that in the earlier years of the Federation, before there has been time to develop new sources of taxation (in particular Federal Excise), the system mentioned in paragraph 57 is likely to leave the Federation without adequate resources, and for this reason it is intended to adopt a transitory provision enabling the Federation to retain for itself a bloc amount out of the proceeds of Income Tax distributed to the Provinces, which would be surcharged for three years, and which will diminish annually over the next seven years, so as to be extinguished at the end of ten years. If the Governor-General should think that the programme of reduction is likely to endanger the financial stability and credit of the Federation, he is to have the power to suspend such a programme. In short, the effect of this provision is that after ten years Income Tax will go to the Provinces, and it is then that the Federal States will be required to contribute Corporation Tax. It is obvious that the Provinces must have an increasing source of revenue for their development, and they are accordingly keen on securing Income Tax. It is equally obvious that immediate transfer of Income Tax to the Provinces will leave the Federation in a very crippled financial condition. It is for this reason that the suggestion made in the White Paper appears on the whole to be fair to the Federation, the Provinces and the States.

28. It is contemplated (vide paragraph 80 of the Introduction) to review it at as late a date as possible before the new constitution actually comes into operation in the light of the then financial and economic conditions both of the Federation and of the Provinces. It is proposed that the determination in such matters should be by 'Orders in Council', a draft of which will be laid before both Houses of Parliament for approval. Similarly, paragraph 61 of the Introduction to the White Paper contemplates the establishment of a tribunal or other machinery for the purpose of determining the value of immunities (especially those subject to fluctuation) which have to be assessed from time to time for the purpose of setting off against contribution (or against any payment from the Federation). I have refrained from expressing any opinion on the question of contribution or immunities, to which the Indian States attach so much importance. I do not desire to be in the slightest degree unfair to them, but it is to be expected that they will be equally alive to their obligations. I recognise the importance of the question, and I feel that it will be necessary to review the whole position at or about the time of, or even after, the establishment of the Federation. I would, therefore, suggest that following the model of Section 118 of the South Africa Act 1909, with some necessary amendments, the Statute should empower the Governor-General to appoint a commission consisting of one representative from each Province, and a certain number of representatives representing the Federation

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and the Indian States, and presided over by such person as the Governor-General may appoint, to institute an enquiry into financial relations which exist between the Federation and these units, and that pending the decision of such an enquiry, transitory provisions may be made on the lines indicated in the White Paper.

#### GENERAL FINANCIAL POSITION AND FINANCIAL SAFEGUARDS.

29. During the progress of the work of the Joint Parliamentary Committee a memorandum, drawn up by Sir Malcolm Hailey, on the financial implications of (1) Provincial Autonomy and (2) Federation, was presented and formed the subject of discussion. Sir Malcolm Hailey's Memorandum presents a very gloomy picture of the situation. As Sir Samuel Hoare pointed out in the course of his speech, the memorandum contains no views, but only gives a summary of the position as it now is and may be envisaged to be in the years to come.

30. The position, according to Sir Malcolm, resolves itself into three objectives which, in order of priority, are as follows:—

"(1) To provide the Centre with (a) a secure means of meeting the normal demand on account of the services for which it is responsible, together with an adequate reserve power to raise from its own resources the additional sums which those services may in an emergency require; and (b) some additional reserve to meet necessary developments in its own sphere of work (of which civil aviation may be taken as an illustration).

"(2) To secure the Provinces as a minimum the amounts now available to them, together with the sums required to meet the ascertained deficits of certain Provinces and to establish the newly-created Provinces.

"(3) To secure that, when (1) and (2) are satisfied, the main benefits of any improvement in Central finances will enure to the benefit of the Provinces."

31. The Appendix to the Memorandum gives us some idea of the financial position which is involved in the White Paper proposals. The cost of the new or enlarged constitutional machinery is about 1 crore; the alienation of half jute export duty will come up to 1½ crores; the subvention to deficit and new Provinces will cost about 2½ crores; the alienation of Income Tax comes up to: (a) 50 per cent. . . . about 5½; and (b) 75 per cent. . . . about 8 crores; and the settlement of States' excess contributions will cost another 1 crore. The loss in opium receipts, the decline in customs, the loss of currency receipts (about 1 crore), the restoration of civil and military pay cuts (about 1½ crores), and the separation of Burma (about 3 crores) must also be taken into account. Sir Michael O'Dwyer's view was that the cost of the new scheme would be 20 crores, or, at any rate, between 15-20 crores. If all this is borne in mind along with the existing conditions of economic depression, it would seem to follow that no constitutional changes either in the Provinces or at the Centre could be inaugurated in the near future, and that we must wait both for Provincial Autonomy and the Federation until the advent of better times.



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32. Sir Samuel Hoare, however, in the course of the speech on the Memorandum put forward certain views which would lead one to the inference that, though the position is one of grave anxiety, it does not necessarily warrant the postponement of all action or the abandonment of all hope for an early advance. Dealing with the case of the Provinces, he said that according to Sir Malcolm Hailey the expenditure for the setting up of Provincial Autonomy might be something between 6½ and 8½ crores. "If you analyse these figures", said Sir Samuel Hoare, "you will find first of all that about a crore is needed for the overhead expenses of setting up a new Provincial machinery; that is to say, the cost of the Provincial Legislature and the cost of the electorate (vide para. 19 of Sir Malcolm Hailey's Memorandum).

"Next, there is another figure of about ½ crore that is involved by the Provincial Governments taking over certain expenditure that is now borne by the Central Government. Then there is the further figure of from 2-3 crores, assuming Burma is separated from India, and, lastly, there is the figure of from 3-4 crores that would be involved if the provincial deficits were to be removed and the Provinces to be set up upon a self-supporting basis."

Having referred to this very formidable state of affairs, Sir Samuel Hoare proceeded to discuss some countervailing factors that ought to be taken into account. First he referred to the fact that India's credit was steadily improving and, secondly, to the fact that, judged by past experience, India responded more quickly than almost any country in the world to an upward movement in the economic field, and (thirdly, he stressed the fact that there were still opportunities for economy to be carried out in certain fields of administration in India, and, lastly, he referred to the possibility of a contribution of some kind towards the defence expenditure of India as a result of the proceedings of the Capitulation Tribunal. He then pointed out that the greater part of this deficit from 6-10 crores was due, not to the setting up of the Federal Government, but to setting up the autonomous Provinces upon a self-supporting basis. He next maintained that if the figures were properly analysed, it would appear that, apart from the comparatively small sum, namely, about three-quarters of a crore, for setting up the Federal institutions at the Centre, the rest of this amount is not fresh expenditure at all, and it is due in the main to two changes in the allocation of the revenues of India, namely, first of all, the change, supposing Burma is separated from India, of leaving Burma two or three crores that it now pays to the Indian Central Government. Secondly, it is due to a figure of about the same amount (about two or three crores), that it is necessary whether changes take place in the constitutional field or whether they do not, to put a stop to the permanent deficits in Bengal and Assam. The conclusion he drew from the entire situation was that, if the state of the world did not get better, if we still go on with commodity prices either at their present rate or actually falling, not only does it make any change almost impossible, but it make the existing system of Indian finances equally impossible, and we shall then have to readjust our whole system of finance in India to meet the state of affairs with which we shall be faced. "Nevertheless, I would venture", said Sir Samuel Hoare, "to urge that in the meanwhile the wise course is, first of all, to go on making our plans, to make them as reasonable and as secure as we can, but, frankly, to admit the fact that if the state of the world does not improve we may have materially to readjust them; and, secondly, I think it is most important to emphasize the fact that, so far as we can see,

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for quite a number of years to come, there is no orange to be divided up in India between the Centre and the Provinces. The fact does emerge, anyhow in my mind as definitely as any other, that for some years to come the Central Government, whether it be the present Government or whether it be a Federal Government, will need substantially its present resources if the credit of India is to be maintained, and if its financial obligations are to be met." In winding up his speech Sir Samuel Hoare again suggested that we should keep these facts constantly in mind, but they should not debar us from proceeding with our constitutional plans, and that also we should keep in mind the fact that there is no Government, either Indian or British, that accurately can say, in the uncertainties of the world, what the state of its finances is going to be in twelve months' time.

33. I have tried to give the views of Sir Samuel Hoare as accurately as possible. From the Indian point of view, those of us who are interested in an early inauguration of the new constitution cannot feel at all happy about the situation. Indeed, I might say that the entire position becomes involved in great uncertainty. It will be noticed that Sir Samuel Hoare has referred to the possibility of further economies in the fields of Civil administration. If beneficial services are to be curtailed and taxes are to be maintained at their present level, then it is quite clear that the new constitution will start with a very serious prejudice against it. One possible avenue of economy in the future would be to transfer the recruitment of the Imperial Services to the Indian Government with power to fix their scale of pay and allowances. Another avenue of economy is the curtailment of military expenditure. On this point there is a wide divergence of opinion between British and Indian public men. The former hold that the expenditure having been reduced from 56 crores to 46 crores, there is no further margin for any economy, and that indeed India has effected more economies in its military expenditure than any other country during the corresponding period. The latter hold that there is still further room for economy in that department. Whether the Government intend to institute further inquiries into this matter or not is a question to which no answer has yet been given.

34. Again, the setting up of the new Provinces due mainly to political considerations, has entailed a further strain on the purse. I would here draw attention to the remarks made by Lord Reading in the course of his speech, which seem to indicate that in the opinion of his Lordship, the setting up of the Second Chambers is a question which, on economic grounds, may still be further considered—an opinion which will be endorsed by many of us.

35. Sir Purshotamdas Thakurdas also reviewed the financial position in the course of his speech and urged that unless the Provinces were "more or less self-dependant" Provincial autonomy would be worth nothing. Under these circumstances, the question which arises is whether the proposed constitution will at all become operative, or whether we shall simply have to wait on events. Sir Samuel Hoare is not without hope that things may improve soon, but cannot be sure. I can conceive nothing more unfortunate than that the fruition of the labours of the last four years should be any further delayed. Our fears are still further aggravated when we remember that, apart from the general financial position, certain financial prerequisites must be fulfilled before the Federation and Central responsibility can be inaugurated (vide para. 32, of the Introduction of the White Paper).

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## FINANCIAL PREREQUISITES.

36. The first condition laid down is that a Reserve Bank free from political influence should be set up by Indian Legislation and be already successfully operating. I understand that a committee of experts, including some Indians, has been sitting, and is expected to submit a report within the next few days. I cannot express any opinion on their recommendations which have not yet been published; I can only express the hope that, as a result of their work, the necessary legislation will be introduced in the Indian Legislative Assembly during its winter session. Assuming, however, that such legislation is passed and meets with no opposition in Indian financial circles, still the question whether sufficient reserves have been already accumulated or can be expected to be accumulated within the next one year or so, has to be answered. What exactly the position is in this respect we do not know. Next, the question which arises is as to how and by whom is the success of the operations of the Bank to be judged. Does the condition imply that we must wait for a series of years before any judgment can be passed on its operations? I would point out that though Government have no doubt had the advantages of the advice of their experts, we have had no such advantage, and it is still not clear to me why it should be looked upon as impossible or dangerous to set up responsibility at the Centre without first establishing a Reserve Bank. At the first Round Table Conference, it was intended to arm the Governor-General with certain special powers in respect of currency and exchange legislation (vide paragraphs 18-20 of the Federal Structure Committee's Report, p. 21), and there does not seem to me to be any reason for departing from that decision pending the establishment of the Reserve Bank. I would also draw attention to paragraph 10 of the Joint Memorandum which Mr. Jayakar and I submitted in December last (vide pages 196-197 of the Indian edition of the Report of the Indian Round Table Conference). The other conditions which are imposed are: existing short term debt both in London and in India, should be substantially reduced, and that India's normal export surplus should be restored. It is difficult to say when these conditions would be fulfilled. It follows, therefore, that the establishment of the Federation depends upon whether these conditions are fulfilled at an early date, or whether they take a long time to fulfil. It is obvious that the position created by the imposition of these conditions is not one which is calculated to afford any satisfaction to those of us who think that any further delay in the inauguration of the new constitution at the Centre, is likely to prove very injurious to the best interests of the country. As I have urged elsewhere, it seems to me to be vitally necessary that a more definite attitude in regard to this matter should be adopted.

## FINANCIAL ADVISER.

37. Another question of importance which arises in connection with finance at the Centre is whether the Governor-General and the Ministers should have the benefit of the services of a financial adviser. Paragraph 17 of the White Paper provides that the Governor-General will be empowered in his discretion, but after consultation with his Ministers, to appoint a

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financial adviser in the discharge of his special responsibility, and also to advise the Ministry on matters regarding which they may seek his advice. The special responsibility for financial matters is, according to paragraph 18, in respect of the safeguarding of the financial stability and credit of the Federation. It is somewhat difficult to define the scope of the expression "financial stability and credit," but one may safely assume that it is sufficiently wide to cover the question of currency and exchange. The Financial Adviser, it will be noticed, will be responsible to the Governor-General, who will fix his salary, and that salary will not be subject to the vote of the Legislature. No term is provided for the continuance of this office, so that it is open to the Governor-General to continue or discontinue this office in the exercise of his discretion. As a layman, it is difficult for me to express any positive opinion as to whether there is or is not a case for the appointment of a financial adviser. I shall here quote from what Mr. Jayakar and I had to say in our joint note which we submitted to the Secretary of State at the conclusion of the Third Round Table Conference: "But we are of opinion that such advice should in the nature of the circumstances be strictly limited to matters which are within the province of the special responsibilities of the Viceroy, and should not be extended so as to amount to a general power of control over the Finance Member. In other words we would strongly urge that every precaution should be taken that the general responsibility of the Finance Member and the Legislature for the administration of the finances of the country should be in no way interfered with or weakened. We are further of opinion that if at all a Financial Adviser has to be appointed for the limited purposes indicated above, the appointment should be made by the Governor-General in consultation with his Ministers, and the Adviser should in no way be connected with any financial or political interests in England or in India. We would further add that the appointment should be provisional, to endure only so long as a clear necessity for the retention of that office is felt and that the advice of the Adviser should be fully available both to the Governor-General and the Federal Government."

38. I notice with satisfaction that in the Introduction to the White Paper it is stated that the Financial Adviser shall have no executive powers (see para. 31, p. 17). It is, however, not enough that, theoretically, the Financial Adviser should be an officer without executive power, but what is necessary is that every care should be taken that the Financial Adviser does not develop into a rival Finance Minister. Indian opinion is particularly sensitive on this point, as the experiment of a Financial Adviser was tried in Egypt, and there had the result, as pointed out by Mr. Young in his book "Modern Egypt," that the Financial Adviser became in fact and in substance the Finance Minister. Again, Indian opinion would like to be reassured that the Financial Adviser to be appointed would be a perfectly independent expert, and that he would not reflect any financial or political interests in England or in India.



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## AUDITOR-GENERAL.

39. While I am dealing with financial questions, I may refer to the position of the Auditor-General in India and the Council of India.

The Auditor-General is appointed directly by the Secretary of State in Council, and there are further provisions with regard to the audit of Indian accounts in the United Kingdom to be found in the Government of India Act. (Vide Sections 26, 27 of the Government of India Act.)

The Auditor-General is not in any sense a servant of the Legislature but he is an important part of the machinery and it is his reports on the appropriation accounts that the Public Accounts Committee considers and he or his representative attends all meetings of the Committees and guides their deliberations. It is suggested that in future the Auditor-General should be appointed by the Governor-General for the Federal audit and by the Governor for the Provincial audit. He should not be removable from office except on an address presented by both Houses of the Legislature.

I would further submit that the accounts of the entire expenditure from Indian revenues whether incurred in India or in England, should be audited by the Auditor-General in India, and laid before the Indian legislature.

## FISCAL AUTONOMY.

40. Another question to which Indian opinion at present attaches the greatest importance is that of Fiscal Autonomy. In this connection I would quote the language of the Report of the Joint Select Committee on the Government of India Bill, dated 17th November, 1919, paragraph 33. "Nothing is more likely," says the Committee, "to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall, in the interests of the trade and commerce of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by a grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute, without limiting the ultimate power of Parliament to control the administration of India and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the Statutes in the British Empire. It can only, therefore, be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada, and South Africa. In the opinion of the Committee, therefore, the Secretary of State should, as far as possible, avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his

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intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire, to which His Majesty's Government is a party."

41. In point of fact, the convention recommended by the Joint Select Committee in the paragraph quoted above, has been in operation since the inauguration of the Montagu-Chelmsford Reforms, and its latest vindication took place at Ottawa, when certain representatives of the Indian Legislature entered into certain agreements subsequently ratified by the Indian Legislature. I express no opinion on the Ottawa agreements; I only refer to them as illustrating the operation of this convention. The Simon Commission dealing with this question in paragraph 402 (Volume I) quote from a speech made by Mr. Montagu on the 3rd of March, 1921, in reply to a deputation from Lancashire on the Indian import duties on cotton, when he endorsed the principle laid down by the Joint Committee. Mr. Montagu said:—

"After that Report by an authoritative Committee of both Houses, and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangement which they think best fitted for their needs, thinking of their own citizens first". In paragraph 532 of the Second Volume, the Simon Commission say that they "do not suggest any modification of the convention itself. But the assumption underlying such delegation is that the Government of India's approval of the course proposed is arrived at independently of the views of the Assembly; and that it takes account of all Indian interests and not merely those for which a majority of the Assembly speak." The Commission regard it as inevitable that the Government of India will in future become more and more responsive to the views of the Legislature.

Having said this, the Commission then go on to say that "delegation of power to the Executive in India is necessary in the interests of administration, and would be even if no reforms had been introduced. But delegation by 'convention' with the purpose of transferring responsibility in some measure to the Legislature raises different issue. The criterion should be not whether an authority subordinate to the Secretary of State is in agreement with the Legislature, but whether the interests at stake are of such a character that His Majesty's Government could waive or suspend its constitutional right to make the final decision. On this view the decision whether the will of the Indian Legislature is to prevail is one for the Secretary of State, or, if need be, for His Majesty's Government, to take, after giving the fullest weight to the views of the Government of India, and before the proposal is put to the Legislature. A convention which sets the Government of India and the Legislature in opposition to the Secretary of State is constitutionally unsound and can only weaken the Government of India in the end." "We think it desirable in any case that any extension of the principle of the 'fiscal convention' should only be made with the approval by Resolution of both Houses of Parliament."

42. These views of the Simon Commission have caused much anxiety in India, as they tend to weaken the convention. Having regard to the

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proposed constitution for the Centre, the views of the Simon Commission seem to be wholly out of keeping with the character, powers, and functions of the proposed Federal Legislature. There should be no room left for doubt that the Federal Legislature will be possessed in the fullest measure of fiscal autonomy, and that the Secretary of State should have no control over the Legislature in a matter of this character. Any interference with, or any attempt at whittling down the fiscal autonomy of India is bound to produce serious dissatisfaction, and to discount to a much larger degree than is probably realised the value of the proposed constitution. The best safeguard that Lancashire, or for the matter of that England, can have for trade and commerce in India, is the goodwill of the people of India. At this stage, I should like to draw attention to the views expressed by Sir Charles Innes in his evidence before the Joint Select Committee. "I think," said Sir Charles, "it\* was mainly due to the fact that Indians themselves realised that it was for them to decide whether or not they would ratify that agreement. In the old days, before we introduced this principle of discriminating protection, every Indian thought that Britain kept India a free-trade country in the interests of her own trade. When the fiscal Convention was introduced, and when we passed a resolution in favour of discriminating protection, and the first Steel Bill was passed, we at once transferred all that from the political aspect to the economical sphere, and in recent years in the Indian Legislative Assembly more and more we have been creating a strong Free Trade Party. It was getting more and more difficult for me to pass Protection Bills. I think that is all to the good; it shows the value of responsibility, and I am perfectly sure that if we had not taken that action you would never have got the Indians to agree to the British influence on steel, or to the Ottawa agreement, and it seems to me a very good example of the stimulating effect of responsibility."

43. In this connection I would also like to quote the following extract from the speech which Mr. Baldwin delivered last month to a meeting of the Lancashire, Cheshire and Westmoreland Provincial area of the National Union of Conservative and Unionist Associations. "There has been," said Mr. Baldwin, "a great talk about safeguards. All the safeguards are being examined by the Joint Select Committee, but whatever safeguards we have, the real safeguard is the maintenance of goodwill. If there is not a basis of goodwill, your trade will eventually wither away, and I regret to say that some of the measures which have been suggested, and which Lancashire people have been asked to support, have, in my judgment, been calculated to destroy rather than to further any possibility of that good will between Lancashire and India which we can get, which we ought to get, and which we cannot do without. . . . Whatever a Government may do you cannot prevent a population nowadays, and especially an Oriental as opposed to an Occidental population, if it considers it has been unjustly treated, from expressing its feelings by refusing to buy goods. The refusal to buy goods, commonly called a boycott, had been brought to a fine art in the East. The Japanese have experienced in China what a boycott means. We have some experience of what it means in India. The causes of the boycott were more than one. The moment the economic condition gets better and the buying power returns, that moment there will be more trade. Besides that, there came

\* See questions by Mr. Davidson (Nos. 5004—5007). This has reference to the ratification of the Ottawa agreement by the Indian Legislature.

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in the political elements—and for a time they were a strong force. But that boycott has died away, and it has died away under the double influence of firm Government, but, as I believe, still more by a conviction in the minds of the Indians themselves that we were going to deal honourably with them and keep our word about getting on with the reforms. The moral aspect of that question helped to break the boycott as much as, if not more than, any question of force.” In short, the convention should, under the new Constitution, be expanded, and the Secretary of State should have no power to interfere with the decisions of the Legislature in this respect.

#### ELECTION.

44. As regards the method of election, the question was examined at great length by the Simon Commission, and their recommendations on the subject were reviewed by the Government of India in their despatch of the 20th September, 1930. I would refer in this connection to paragraph 37 of Vol. II of the Simon Commission Report, which says:—“We venture, however, to think that *a priori* arguments against indirect election should not be considered, especially in the light of recent experiences, as conclusive. It is indeed of great importance that the individual voter in India should have the training in political responsibility which may come from going to the polling booth and deciding what candidate shall have his support. For this reason we should not be prepared to see the method of indirect election generally applied in electing the Provincial Councils. But after Provincial Councils have been constituted by the direct choice of citizens of the Provinces, it appears to us to be quite unwarranted to assume that training in citizenship will be impeded by the adopting of a device for constituting the Central Legislature, which, having regard to the size of India, has such manifest advantages and avoids such obvious difficulties. It may be said that the method of composing the Federal Assembly which we are suggesting will confuse the mind of the individual elector, since he will at one and the same time be choosing both a provincial representative and a member of an electoral college. The objection seems to us of theoretical interest rather than of practical substance.” Dealing with this matter, and after pointing out the difficulties of polling even a limited electorate over an area so widespread and of such varied physical characteristics, the Government of India stated their views as following in para. 135:—First, “the central elector has exercised the franchise with increasing readiness and at least as freely as the elector to Provincial Councils. We need cite only such matters as the Sarda Act, the Income Tax, the Salt Tax, the Railway Administration, and the Postal rates. Even more abstruse matters such as the exchange ratio and tariffs, interest large sections of the electorate. Second, the electoral methods natural to the social structure of India may be held to some extent to replace personal contact between candidate and voter, a contact which adult suffrage and party organisations make increasingly difficult in western countries. The Indian electorate is held together by agrarian, commercial, professional and caste relations. It is through these relations that a candidate approaches the elector, and in this way political opinion is the result partly of individual judgment, but to a greater extent than elsewhere of group



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movements. These relations and groups provide in India a means of indirect contact between voter and member, reducing the obstacles which physical conditions entail. Moreover, we are impressed by the further consideration that ten years ago Parliament of its own motion set up for the first time a directly elected Assembly, representing the whole of India. That Assembly, in part perhaps because it is directly elected, has appealed to the sentiments of India, and sown the seeds, as yet only quickening, of real representation. Accordingly, unless new considerations of greater importance have to be taken into account, we feel reluctant as yet to condemn an experiment undertaken so recently in a country awakening to political consciousness. On these general grounds we would hesitate to hold that the orthodox method of representation by direct election is unsuited to the conditions of India. It may be admitted that during these ten years direct election has not achieved all the results which Parliament perhaps hoped, nor has it overcome all the obstacles which the vast size of the country and the complication of separate electorates impose. But in many ways its success has been growing, and it has contributed to the strength of the Assembly as a focus of national allegiance. On the other hand, it would not provide that expression of provincial views as such which may be judged desirable in the new conditions contemplated by the Commission. In financial matters, in particular, this defect may be serious. But, as against a plain alternative of indirect election we believe that the balance of the argument is in favour of direct election."

45. The position was further examined by Lord Lothian and his Committee when they went out last year to India. In chapter 3 of their Report they deal with the question of the indirect system and other possible modifications of adult franchise. They discuss five possible courses, namely: (a) adult franchise by indirect voting; (b) adult suffrage within certain age limits; (c) adult franchise for large towns; (d) household suffrage; (e) indirect election through local bodies. In paragraph 42 of their Report, after citing the cases of Egypt, Turkey, Syria and Iraq, where universal adult suffrage has been adopted, by grouping the whole population into groups of about 20, 50 and 100, or other appropriate numbers, each group electing from among itself its own member, one or more secondary electors should form the constituencies for returning members to the legislature in the ordinary way. They discuss in a subsequent paragraph the reasons against indirect election. There are four main reasons against indirect election. The first is because "it involves the abolition of the direct system of voting, to which India has become accustomed during the last 12 years, through four elections held for the Provincial Councils, the Legislative Assembly, and the Council of State, and also through numerous elections for district and local boards, and municipalities. Some seven million electors who have hitherto been entitled to exercise the direct vote at elections, to legislative bodies would thus lose it; and obtain only an indirect vote in its place. The overwhelming mass of evidence we have received has been to the effect that the strongest opposition would be aroused by any proposal to abolish the direct vote." The second reason that they assign is that "the indirect system would lead to one of two results, neither of them desirable—namely, either the primary election would be a non-political election, in which case the candidates and parties would endeavour to secure the return of secondary electors pledged to themselves." The third reason is that the primary voters under the indirect system, would have no means of judging whether the secondary elector carried out their wishes or not. The fourth reason urged by them is that the indirect system undoubtedly lends itself to manipulation and jerry-

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mandering. Then they go on to say in paragraph 47: "moreover, certain Provincial Governments and Committees which were at one time inclined to support the indirect system have now abandoned it. For all these reasons we have unanimously decided to reject the universal indirect system." I think that the view taken by the Lothian Committee correctly reflects the overwhelming mass of Indian opinion. No doubt one of the main reasons urged against direct election for the Legislature is furnished by the size of the country, and the difficulties of transport in rural areas. It must not be supposed that I am opposed to adult franchise; on the contrary, I think that the one way to strengthen the position of the masses is to give them adult franchise. It may be that they will not be able to make a discreet use of their vote in the beginning, but I think that the ignorance and indifference of the masses may easily be exaggerated. They may not be able to understand or appreciate questions of high finance, exchange, currency, etc., but they are quite capable of understanding their local needs, and I have no doubt that experience and mistakes will be their best educators. At the same time, I realise the administrative difficulties pointed out by Lord Lothian in his Report. I would therefore urge that from the practical point of view the most desirable thing would be to place power in the hands of the local Legislature to extend the franchise in the light of experience gained, so that within the next 20-25 years the country would gradually work up to a system of adult franchise.

As regards the fourth course, it is not necessary to repeat the arguments contained in the Lothian Report, as I am more or less in agreement with their suggestions. I would not hesitate to allow adult franchise, in big towns, but I have a strong feeling that while on the one hand this might strengthen the position of the urban section of the people, it would on the other hand tend to weaken the position of the rural section of the people. In any case I should deprecate any difference being made between the rural and the urban areas in regard to such matters, and if adult franchise has got to come, as, in my opinion, it should, the enfranchisement of the towns and the villages should synchronise.

46. I am quite alive to the necessity of giving a training to the masses in the exercise of the right of voting, but that can easily be done under the future constitution, by the setting up of local bodies of an effective character, with definite powers in regard to local matters. If local bodies such as the village Panchayats, have hitherto been unable to give a good account of themselves, it is because their finances and their powers have been limited, and no attempt has been made to encourage them or to help them in the management of their local affairs.

Generally speaking, therefore, I support the recommendations of the Lothian Committee Report, so far as the number of men to be enfranchised is concerned, though personally I should have been glad if the number had been larger.

47. The manner in which there is contact established in India between the candidate at the election and the member and his constituency has been very well described by Sir John Kerr. While no doubt road transport is still very undeveloped, it should not be overlooked that the advent of the motor-bus in rural areas and the growth of the vernacular press which has been steadily penetrating these areas, are new factors which are bound, as time goes on, to play a considerable part in developing political consciousness in the villages, and curtailing the distance between rural electors and their members.

Before concluding my remarks on this subject I may point out that the effect of the proposals of the Lothian Committee is to create an electorate of between 8-9 millions. (See paragraph 414 of the Lothian Committee.)

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48. The Lothian Committee has recommended that the number of seats in the Federal Assembly should be increased so as to allot British India 300 seats, instead of 200, thus reducing the average area of the constituency by one-third.

Sir Akbar Hydari's view has again urged that the size is too large and that it should be kept at 200. The matter has not been overlooked by the Lothian Committee. The reason which they assign for the increase in the numbers is that if responsible Government is to develop properly, the electoral system must make it possible for candidates and members to get and keep in touch with their constituents, and from this point of view an increase in the British seats is necessary.

49. In a preceding paragraph of their Report, the Lothian Committee refer to the area of the United States of America which is 3,026,789 square miles, of which one-third consists of thinly populated mountain territory. The population is 122,775,046. The number of members of the House of Representatives is 435, or one for every 6,958 square miles and 282,241 of the population. The number of the Senate is 96. Two members are elected by each State, voting as a single constituency, of which the largest is New York, with an area of 49,204 square miles and a population of 12,588,066, and the smallest is Rhode Island, with an area of 1,248 square miles and a population of 687,497. Probably also if the size of the constituencies in Canada and Australia is examined as suggested by Lord Lothian, it will be found that the size of constituencies in those countries is also of enormous proportions. Of course I assume that when we are able to work up to a system of adult franchise the whole system may have to be revised, and readjusted, but that is a matter for further development.

50. The size of the constituencies, the number of persons enfranchised, and the class of men that may be returned to the two Houses of the Legislature, have no doubt an important bearing upon the efficiency of the Legislature. It has been suggested that the size of the two Houses and of the Upper House in particular should be very much smaller than what is proposed. Another suggestion has also been put forward to the effect that in order to make the Upper House fully federal it should consist of the delegates nominated by Provincial Governments. In this connection while I would invite attention to the views of Sir Akbar Hydari and Sir Mirza Ismail, I would also point out that the views of the representatives of the other Indian States are wholly different. Indeed the latter have pressed for larger Houses, so as to provide for a representation of the Chamber States, and the smaller States, by grouping. The smaller States want still larger Houses. I would submit that British India will not be satisfied with Houses of the size and type suggested by Sir Akbar Hydari, or Sir Mirza Ismail. I also venture to doubt very seriously whether a smaller Upper House can do justice to many States, particularly the smaller States. Indeed, if this view is pressed or accepted, I apprehend that it may imperil the entire scheme of the Federation. The constitution is already a very conservative one, and I fear that one consequence of making the Upper House representative of the provincial governments and the governments of the States may be that it will become too provincial in its outlook and might easily become involved in provincial rivalries and conflicts. There are other objections which may be urged against this point of view. The general practice, as I understand it, is that in a Federal constitution the Lower House should seek to represent the nation and the Upper House the States, and I think there is no valid reason why, in the case of India, we should depart from this principle.



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## BASIS OF ENFRANCHISEMENT.

51. The two qualifications which have been recommended by the Lothian Committee in paragraph 83 are property and education. In paragraph 82, after referring to the case of Bihar and Orissa, and Central Provinces, where the existing electorate is only a little over one per cent. of the total population, the Committee say that "what we have done is to fix the franchise as low as we consider possible, having regard to all the circumstances of the case." While the principle adopted by the Committee seems to me to be sound, the White Paper is open to the criticism that it does not provide definitely for its expansion. In this connection I would point out that the rejection of wages as one of the bases of general franchise has caused much dissatisfaction in India. The Committee point out that in villages where the employment of agricultural labour is not constant, and where remuneration is sometimes paid in cash and sometimes in kind, and also by permission to cultivate land, it would be an impossible task to ascertain whether the wages earned by individuals in a year had reached the prescribed standard or not. The difficulties would be less serious in the case of large industrial concerns which keep regular books, and attendance rolls, but would still be formidable in the case of smaller firms relying to a great extent on casual labour. I realise that within the time at their disposal the Committee could not very well prepare a scheme to meet the needs of wage-earners. But it is a class which should not be ignored and which is going to become more and more important in the near future. I would suggest, therefore, that local Governments should be instructed to prepare a scheme for the enfranchisement of these classes so that after the first election they may be enfranchised in time for the second election.

## RAILWAY BOARD.

52. The question as to a Statutory Railway Board which is referred to very generally in paragraph 74 of the White Paper, was never discussed at any one of the three Round Table Conferences, but it was one of those items which came up for discussion at Delhi at the Consultative Committee presided over by His Excellency the Viceroy. The broad principle that there should be a Statutory Board, and that the Statute constituting the Railway Board should be passed by the Indian Legislature, was accepted at Delhi. During the sittings of the Joint Parliamentary Committee another expert Committee to which some members of the Indian Legislature have been invited, has been sitting and discussing the various issues connected with the composition, powers and functions of the Board. I have not had the advantage of reading the report of the expert Committee or discussing the various proposals which have been considered by that Committee, with the members of the Joint Parliamentary Committee or the Indian Delegation. Subject therefore to my right of revising my opinion or making any other suggestion which I may consider necessary to make after reading that report, I would like to express my views generally on some of the important issues that seem to me to arise in this connection.

53. While admitting the commercial and strategic importance of the Railways in India, I think it to be of the essence of responsible government that Railways should be transferred to the Federal Government and that the Federal Legislature should be empowered to pass such legislation as it might be advised to pass, setting up a statutory Railway Board with clearly defined powers and functions.



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54. The members of the Railway Board or Railway Authority, should be appointed by the Governor-General upon the advice of his responsible ministers. I have no doubt that whatever the number of members be, whether it is three, five or seven the Ministers will take every care to ensure that expert knowledge and technical experience are adequately represented. Similarly I am confident that they will secure the representation on the Board of the Muslims, and other minorities. The Minister in charge of Railways should be the ex-officio President of the Board. The Legislature should have the power to discuss and lay down general policy, although the execution of that policy and general administration should be left in the hands of the Board or Railways Authority. As regards the revenues, I would point out that for some years past a separate Railway Budget has been prepared in India. The statute may provide for the formation of a Railway Fund, into which shall be paid all revenues raised or received by the Government for the administration of the railways, such funds being appropriated by the Legislature to the purposes of the railways in the manner to be prescribed by the Act, constituting the Board and the Fund. (Vide Section 117, 127, 128, 129, 130 and 131 of the South Africa Act, 1909.)

55. Having regard to the fact that Defence is a reserved subject, I think it may be necessary to provide that all railways must comply with such requisites as the Governor-General may make as to the use of railways for the purpose of the Defence of the Country. (cf. Article 96 of the German Constitution.)

I received the Confidential Memorandum A. 23, containing proposals for the future administration of Indian Railways, after I had completed my own Memorandum. I should like to take more time in studying the Memorandum, and then if I should think it necessary to make any other submissions, I should do so. At present I can only say that I am of the opinion that legislation constituting a Statutory Railway Authority should be passed by the Indian Legislature.

#### FUNDAMENTAL RIGHTS.

56. Indian opinion of all sections has been very insistent that the constitution should provide for certain fundamental rights. The Nehru Committee Report laid down certain fundamental rights and the question as to their inclusion in the constitution was raised at some length at the third Round Table Conference. Paragraph 75 of the Introduction to the White Paper, states that His Majesty's Government see serious objections to giving a statutory expression to any large range of declarations of this character, but they are satisfied that certain provisions of this kind such for instance, as respect due to personal liberty, and rights of property and the eligibility of all for public office, regardless of differences of caste, religion, etc., can appropriately and should, find a place in the Constitution Act. His Majesty's Government think it probable that occasion may be found in connection with the inauguration of the new Constitution for a pronouncement by the Sovereign and in that event, they think it may well be found expedient humbly to submit for His Majesty's consideration that such a pronouncement might advantageously give expression to some of the propositions suggested to them in this connection which prove unsuitable for statutory enactment.

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Some of these fundamental rights are to be found in the Proclamation of Queen Victoria, and some others in the Government of India Act itself. The following passages may well be quoted from the Proclamation of Queen Victoria:—

“We declare it to be our Royal will and pleasure that none be in any wise favoured, none elected, or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

“And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.

“We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State, and we will see that generally in framing and administering the law due regard be paid to the ancient rights, usages, and customs of India.”

Section 96 of the Government of India Act itself provides that no native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of that, be disabled from holding any office under the Crown in India.

I am aware of the objections that are urged against fundamental rights being specially mentioned in the Constitution, on the ground that when they are not enforceable in a court of law, they are no more than mere moral maxims, and that they generally amount to a limitation of the powers of the Legislature. Many of the post-war constitutions have, however, included fundamental rights. It seems to me that in the peculiar circumstances of India, and particularly with a view to give a sense of security to the Minorities and the Depressed classes, it is necessary that too much emphasis should not be laid on the orthodox British legal point of view, regarding fundamental rights, but that some of them should find a place in the Statute itself, and others might, as stated in the White Paper, find expression in the Royal Proclamation. I refrain from going into further details as to the nature and character of the fundamental rights, which should be recognised. The question was discussed at length at the Third Round Table Conference. The list of fundamental rights in the Nehru Committee Report also indicates the nature of fundamental rights which Indian opinion generally favours.

#### TRANSITORY PROVISIONS.

57. Proposal No. 202 of the White Paper which deals with transitory provisions has given rise to many misapprehensions. Sir Samuel Hoare was, however, closely examined both by Mr. Rangaswami Iyengar and myself on the 21st July as to the meaning and effect of proposal No. 202, and I would invite attention to his evidence on this point. Briefly put, the effect of his statement in the light of which he said proposal No. 202

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should be interpreted is that after the setting up of the new constitution in the provinces the constitution of the Centre will have to be readjusted until it is possible to inaugurate federal constitution for the Centre as contemplated by the White Paper. During this period there will have to be readjustments of legislative, financial, and administrative relations of the Centre with the Provinces. Nevertheless the Executive Council of the Viceroy and the Indian Legislative Assembly, including the official bloc, will continue on their present basis. He also added that the requirement of the previous assent of the Governor-General to the provincial legislation will during this period have to go, excepting where the Statute itself may have imposed such a condition. It seems to me that under this arrangement it will be very necessary to closely examine the concurrent powers of the Provincial and the Central Legislature so as to avoid conflicts between the two.

After this statement by Sir Samuel Hoare I was naturally anxious to find out from him as to when he envisaged the Federal Constitution to come into operation. He could not commit himself to any point of time owing to the uncertainty of certain essential factors, but he said, "we are doing, and will continue to do, all in our power to satisfy the conditions which the White Paper lays down as precedent to Federation." He thought, "if the financial conditions are such as to justify the institution of Provincial autonomy, then . . . they are very much the same kind of financial considerations that would not necessitate any very great delay in bringing into operation the Federal Centre." I do not wish in any degree or measure to throw any doubt on his desire to achieve an early fruition of his proposals both with regard to the Provinces and the Centre, but again, bearing in mind the uncertainties of the situation and the slowness with which ordinarily the official machinery works, I must express my concern as to the entire situation. I can only express the hope that the transitory provisions contemplated by proposal No. 202 may not be in operation for more than a year or so.

#### AMENDMENT OR CONSTITUENT POWERS.

58. The subject of constituent powers is dealt with on pages 64 and 65 of the report of the Third Round Table Conference. I submit that the constitution should provide for such powers being vested in the Indian Legislature. The class of subjects which may be included within the ambit of these powers, the conditions on the fulfilment of which these powers may be exercised, and the time when they may be exercised should all be laid down. His Majesty's Government express the view in paragraph 5 of the Report of the Third Round Table Conference (page 65) that the authority of Parliament to decide any issues which might present themselves involving changes of a substantial character in the Constitution should be left unimpaired, but that they undertake to see that any provisions designed to set up a machinery which might obviate the disadvantages and inconveniences to be contemplated from the lack of means to secure any alteration of the details of the Constitution should be framed. As illustrating this I may refer to the question of the expansion of franchise after a certain time and also to the revision of the communal award, subject to the conditions laid down therein. I might refer to Section 152 of the South

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Africa Act as a precedent for laying down the time limit within which certain provisions (such as those relating to Native Affairs) could not be amended until the expiry of a certain period and without a certain majority. Having regard to the scheme of the White Paper which provides for certain Reserved Subjects, the powers of amendment will probably be of a limited character unless as indicated in another part of this note, the constitution provides a special machinery for effecting the transfer of those subjects. I would, therefore, suggest that a list of those matters which may fairly admit of amendment by the Indian Legislature should be prepared and incorporated in the Act. As a guide to these details I may refer to schedule 5 of the present Government of India Act though, no doubt, there will be many more matters which will be admissible in the list of subjects in regard to which the Indian Legislature should possess the power of amendment.

#### PROVINCIAL CONSTITUTION.

59. The essential features of the constitution for the Provinces outlined in the White Paper are:

- (1) That there are to be Reserved Subjects, every subject being transferred to the control of and administration by the popular Ministers;
- (2) That collective responsibility of Ministers is to be aimed at;
- (3) That the Governor is vested with certain special responsibilities.

60. A great deal of evidence, mostly of the representatives of the various services, has been led before the Committee, and the entire position has been explained at length by the Secretary of State in the course of his evidence. On the question of the safeguards and the power of the Governor to make and promulgate Ordinances, I have nothing to add to the note which I submitted at an early stage of the proceedings of the Committee. I request that it may be read as a part of this Memorandum. As regards the special procedure provided by Clauses 92 and 93 for the passing of the Governor's Acts, I would point out that the legislature containing no official element, the Governor will have no machinery at his disposal by the use of which he can secure the progress of such a Bill, and it would not be fair to the Ministry to secure the co-operation and support of, say, the leader of the Opposition. Further, it seems to me that this procedure is calculated to blur the line of responsibility of the Minister, and the Governor may, in seeking to test public opinion, undermine the authority of the Minister, and if the Legislature refuses to accept his recommendation, his own authority will be undermined.

The important points which have emerged in the course of evidence may be tabulated as follows:

- (1) Whether law and order should be transferred in the Provinces;
- (2) Whether, if law and order are transferred in the Provinces, it is necessary or desirable to make any special provision for coping with what is called the terrorist movement;
- (3) Whether the Inspector-General of Police should be treated on a special footing in the matter of having a direct access to the Governor;
- (4) Whether any special staff is to be provided for the Governor enabling him to cope effectively with his special responsibilities;



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(5) Whether in the constitution of the Provincial Executive the principle of the Cabinet system, under which there is a Prime Minister and other Ministers are appointed upon the selection made by him, should be followed from the start; (b) whether the Cabinet might contain a non-elected Minister appointed upon the recommendation of the Prime Minister of the Cabinet;

(6) Whether there shall be Second Chambers in the Provinces.

I shall now briefly deal with these questions.

61. As regards 1, 2 and 3, I think it necessary to state the Indian position as I conceive and interpret it.

All the three Round Table Conferences have unanimously recommended the transfer of law and order, and both the Labour Government and the National Government have been parties to this recommendation. The Simon Commission also recommended the transfer of law and order, though it contemplated the inclusion in the Cabinet of a Minister drawn from official or other non-elected sources, who would not necessarily be in charge of law and order (vide paragraph 64 of Vol. 2, p. 48). Indian opinion treats this question as resjudicata, but quite apart from the recommendations of the Round Table Conference, His Majesty's Government, the Government of India, and the Simon Commission, it seems to me that there are very weighty reasons for the transfer of law and order.

62. Firstly, the reservation of law and order would mean in actual practice the concentration of all attack in the Councils on that single department, and prevent the growth of that sense of responsibility and harmonious co-operation between the Legislature and the Government, without which the success of the scheme must be seriously imperilled. Secondly, the policy adopted in a transferred department may give rise to a delicate situation in the sphere of law and order, and the Police may be asked to implement or execute such a policy. For instance, it is conceivable that a policy adopted in the domain of land revenue, excise, religious endowments or forests, might easily create difficult and awkward situations for the agency of law and order. To reserve law and order and to transfer other subjects is to create opportunities for friction and to court the failure of the entire Government.

63. I have no doubt that an Indian Government, even though it may be responsible and subject to political pressure, as other responsible governments are, can effectively maintain law and order. I have equally little doubt that the reservation of law and order will be looked upon by Indians as a serious reproach to Indian character and capacity and imperil the success of the entire scheme; it will not amount to even provincial autonomy, and I am confident that no section of Indian opinion can support or will be prepared to work such a scheme.

64. It has, however, been suggested in certain quarters that law and order should not be transferred in Bengal, in view of the existence of the terrorist movement there. I think it would be most unfortunate to discriminate against Bengal in this respect. So far as it is known, the Bengal Government does not favour the reservation of law and order. The terrorist movement has been in existence in Bengal for the last 25 years, and during all this period the administration of law and order has been in the hands of the official Government. It cannot be denied that the strongest possible measures have been taken from time to time in coping with this movement, and yet it has not been uprooted. It is brought under control for some time, but again it comes to the surface. The fact of the matter is that no Government can cope with a movement of this character unless it has

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the active support of the vast majority of the people. I have no doubt that the vast majority of the people of Bengal are instinctively opposed to a movement of this character. Mr. Page, in the course of his evidence, however, suggested that many people were unable to render active assistance to the Government for fear of social ostracism. This may be true of a certain number of people, but it seems to me that the idea of the fear of "social ostracism" may be exaggerated and carried too far. The only way of obtaining the active support of the vast majority of the population of Bengal is by transferring real responsibility to the people themselves. This is bound to have a desirable reaction on public opinion.

65. It has been also suggested that the special branch of the C.I.D. may be segregated from the rest and placed in the hands of the Governor. The reason which has been assigned for this suggestion is that informers will be reluctant to give assistance to the police if they know that their names are going to be disclosed to a popular Minister or the Cabinet. It seems to me that it should not be difficult to so arrange things that the strictest secrecy may be observed about information of this character, and as a matter of practice, the other members of the Cabinet need not be inquisitive to know the names of the informers. It is in the highest degree improbable that a Minister will fail to realise his responsibility in respect of such secret information, or that he will disclose it to others when duty and prudence will require that he should treat it as strictly confidential. The possibility, also, of Indians rising to the position of Inspectors-General cannot be excluded. It seems to me that the argument that informers will be unwilling to render assistance if they know that their names will be made known to Indian Ministers or Inspectors-General may also be carried too far. Whether on administrative grounds it will be convenient to segregate the special branch from the rest of the C.I.D., or whether the entire organisation of the C.I.D. can be separated from the rest of the Police, is a matter which, to put it at the lowest, admits of some doubt. But assuming that the Governor of a Province finds that the minister in charge of law and order is unable to cope with this movement, the White Paper proposals give him ample power in dealing with this branch of law and order. I shall in this connection refer to propositions 69-70 of the White Paper. In brief, my suggestion is that no special provision should be made in the constitution providing for the segregation of the C.I.D. as a whole, or for the segregation of the political branch from the rest of the department of law and order. The White Paper amply safeguards the position.

66. The third question as formulated by me above is whether the Inspector-General should be treated on a separate footing in the matter of having direct access to the Governor. If what is meant by direct access to the Governor is that the Inspector-General should be able to approach the Governor over the head of his Minister and take any orders from him without the knowledge of the Minister, then I think it will be open to serious objection. Ordinarily, it should not be difficult under the scheme proposed by the White Paper for the Governor to call the Inspector-General and obtain such information as he wants from him. Under proposal 69, he has the power of making rules. Further, it is implicit in his special responsibility in regard to law and order that he must keep himself in touch with important matters connected therewith. Again, under proposal 69, the Governor has got the power to preside at meetings of his Council of Ministers. There are thus so many avenues of information open to him. It will be remembered that when Sir Charles Innes was asked as to how

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he would be able to see the Inspector-General of Police, he said that he could meet him on the golf course. In answer to a question put by Lord Eustace Percy, Sir Charles Innes expressed himself thus:—

*Question:* "Would you make any rule as regards the Inspector-General of the Police?"

*Answer:* "No, I would not, myself. If I wanted my Inspector-General of Police, I should play golf with him, or get at him in some way like that; I should always keep in touch with him."

67. As regards the fourth question, Sir Malcolm Hailey explained during the course of the evidence of the Secretary of State, that in Presidency towns, where the Governor is usually selected from the ranks of public life in England, and has no local knowledge, it may be necessary to give him a Secretary of the standing of a member of the Board of Revenue, or of the Executive Council, and that in other Provinces where a Governor, according to him, will presumably be a member of the I. C. S., a Secretary of the status and experience of a senior Collector, or a Commissioner, may be appointed to help the Governor in the discharge of his special responsibility. I would again repeat that the avenues of information open to the Governor are many. We need not suppose that the Governors of the future will be wanting in tact, or a keen sense of their duty, or that the Ministers will necessarily be perverse and at cross-purposes with the Governor.

68. With respect to the last question, it was pointed out by Sir Samuel Hoare, and, if I may say so, rightly, that, excepting in the case of Ireland, in no other constitution of any country within the British Commonwealth of Nations is there direct provision for responsible Government, or for the collective responsibility of the Ministers. It is true that Sir Samuel Hoare at one stage of his evidence said that he would leave all this to organic growth, but he also made it clear that he was aiming at it and that he would not object if the system of a collectively responsible Cabinet was accepted from the very beginning. Under the Montagu-Chelmsford Reforms, Madras is the only Province where there has been a Chief Minister, and the Ministry have from the start worked collectively. In the other Provinces there has been at times collective responsibility, and at others it has been absent. We cannot afford to take risks in this matter, and I think it is very necessary that the Cabinet form of responsible Government should be adopted in the Provinces from the commencement of the new constitution, and that instructions should be definitely laid down to that effect in the Instrument of Instructions to the Governor. Notwithstanding the fact that separate electorates are the basis of representation, I feel that in actual practice it will not be found difficult to get representatives of the minorities to work in close co-operation with the Minister belonging to the majority community.

69. The last part of question 5 is whether the Cabinet might contain a non-elected Minister appointed upon the recommendation of the Prime Minister. In support of this suggestion, it was pointed out that in England Members of the House of Lords who owe no responsibility to any electorate are appointed Ministers. It was further pointed out that in France the Ministers of the Marine and War are generally selected from outside the ranks of the elected members. In my opinion, to introduce one feature of the British or French constitution into the proposed Indian Constitution and to ignore the rest would not be conducive to the smooth working of the Cabinet, even though such an outsider may find himself placed in the Cabinet with the consent of the Prime Minister. I cannot, therefore, agree to this suggestion.



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## SECOND CHAMBERS IN THE PROVINCES.

70. The last question that has emerged from the evidence is as to whether there should or should not be second Chambers in the Provinces. It will be noticed that so far as the White Paper is concerned, proposition 74 provides for single Chambers in all the Provinces, excepting for Bengal, the U. P. and Bihar. In Bengal the total number of seats proposed in the Upper Chamber is 65; in the U. P. it is 60; and in Bihar it is 30 (vide Appendix III, part 2, p. 92 of the White Paper). In my first note on the safeguards I have already discussed the provisions of proposal 74 as to the abolition of a Second Chamber in these three provinces, and the establishment of the Upper Chambers in those in which they will not come into existence at the start of the new Constitution. It is therefore not necessary to say anything more on this part of proposition 74. I shall however, submit a few considerations on the main issue as to whether the provincial legislature everywhere should be bicameral. As regards the three Provinces which have been selected for the establishment of Second Chambers at the commencement of the Constitution, I believe the decision has been arrived at mainly because they are pre-eminently zamindari Provinces. With reference to Bihar, it appears from the evidence of Mr. Sinha that when the question was discussed in the Legislature of the Province in January last, the voting was 39 in favour of the proposal for the establishment of a second Chamber, and 30 against it. But the 39 voters in favour of the proposal included non-officials, members nominated by the Governor, and also one official, while those against the proposal were all elected representatives. The position in Bengal was more evenly balanced, but there seems to me to be little room for doubt that the bulk of general opinion as distinct from the opinion of the zamindars is against the establishment of a Second Chamber there. In this connection reference may be made to the memoranda on behalf of the various associations representing the land-holders in the various Provinces, and particularly to the evidence of the Maharajah of Burdwan. In the U. P., too, the Zemindars are strongly in favour of a Second Chamber, and, indeed, they have suggested that "the resolution about the abolition of the Chamber should be confirmed subsequently by an Act passed two years after the election of the new Provincial Assembly." (Vide p. 202, No. 7, of the Minutes of evidence.) They have further "strongly urged that the Second Chamber should become a permanent feature of the Legislature of these Provinces." The U. P. Legislature has a very large element of the Zemindar electorate, and in judging of the resolution passed in the U. P. Council, this fact should not be overlooked. It is perfectly true that wherever there are important zemindars there is a demand for the establishment of a Second Chamber, but this demand is not endorsed by general public opinion. I personally have grave doubts as to whether Second Chambers by themselves can effectively protect the interests of the zemindars or otherwise conservative classes. I am also more than doubtful as to whether, constituted as the zemindar class at present is, it can supply a sufficient number of men who can effectively discharge the functions of the members of an Upper Chamber as in other countries. Nor do I feel so confident as Sir Malcolm Hailey seemed to be that it would be possible to secure the right type of men from among commercial magnates or retired members of the judiciary. If the Second Chamber's legitimate function is going to be that of a revising body, then I do not expect any such results to follow from them in the Provinces of India. On the other hand, if they are to function merely as brakes upon hasty and ill-considered legislation passed by the Lower Chambers, one ought not to overlook the danger—by no means imaginary—that the Second Chambers may, and probably will effectively block all social



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legislation of a progressive character, and thus come into conflict with the popular Lower House and the general public opinion. There is also the question of a greater strain being placed on the provincial purse by the establishment of a Second Chamber, and we ought not to overlook it.

71. The whole position was examined by the Simon Commission in Chapter 4, Vol. II, of their Report. I would refer to paragraphs 113 and 114, which indicate the views of the Provincial Governments and of the committees associated with the Commission. In paragraph 116, at page 99 of their second volume, the Simon Commission express themselves as follows:—

“It has generally been proposed in evidence before the Joint Conference to constitute Second Chambers disproportionately representative of vested interests. They fear that such Chambers would be regarded as an undemocratic instrument of Government, and that ceaseless conflict between the two Houses would result. They think that this danger will be a real one, however the Second Chambers may be formed. While a Second Chamber will not be a substitute for the Governor's powers, its existence may be used as an argument for modifying the Governor's powers before this is desirable, and it may support the Lower House against the Governor and so increase rather than prevent friction between him and the Legislature. So long as Ministers are secured in the support of the Lower House, and so obtain the funds which they require, the Second Chamber can exercise little control on the administrative side, and it is here that the influence of a Legislature is most required.” I would further point out that it does not appear to me to be the case that the Provincial Legislatures or the Government of India consider the establishment of Second Chambers in all the Provinces as vitally necessary. “We would not propose”, say the Government of India, in paragraph 27 of their Despatch, “that in any Province a Second Chamber should be made a condition of advance. Where local opinion favours and local conditions seem to require a Second Chamber, it should, in our view, be set up and incorporated in the Constitution.” As regards the three Provinces of Bengal, Bihar and Orissa, and the United Provinces, they accept the recommendations of their local Committees, but, as I have submitted above, in these three Provinces general public opinion as distinct from the opinion of the zemindars or other conservative sections of the people is not prepared to support a Second Chamber. I do not wish to under-rate the importance of the evidence of the European Association, or of the Zemindars' Association, in regard to this matter, but I am bound to say that the case for the addition of a further conservative element to a constitution, the striking feature of which is an over-cautious conservatism, has not been made out beyond all doubt. On all these grounds I am against the establishment of Second Chambers in any Province.

#### PUBLIC SERVICES.

72. The question of the Public Services is dealt with at length in the White Paper. Reference may be made to paragraph 70-73 of the Introduction; pages 35-36 and paragraphs 180-202; pages 81-201 of the Proposals and to Appendix VII; page 120. In the existing Government of India Act, the relevant sections are 96B-100.

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The Civil Services in India have within the last eighteen or twenty years come under detailed review by two Royal Commissions, viz.: (1) The Islington Commission which assembled on 31st December, 1912, the report of which was submitted on 14th August, 1915, and (2) the Lee Commission which submitted its report on 27th March, 1924.

There were three questions which were referred to the Lee Commission, viz.:—

(a) The organization and general conditions of service, financial and otherwise, of the Superior Civil Services in India;

(b) The possibility of transferring immediately or gradually any of the present duties and functions to Services constituted on a provincial basis;

(c) The recruitment of Europeans and Indians respectively, for which provision should be made under the constitution established by the Government of India Act, and the best methods of securing and maintaining such recruitment.

73. As regards the Superior Civil Services, namely the Indian Civil Service and the Indian Police Service, the Commission made certain definite proposals for their Indianisation. Speaking of the Indian Civil Service they say that in their view it is desirable in order not only to carry out the spirit of the Declaration of 1917 but to promote an increased feeling of camaraderie and an equal sense of responsibility between British and Indian members of the Services that the proportion of 50-50 in the cadre of the Indian Civil Service, should be obtained without undue delay and that the present rate of Indian recruitment should be accelerated with this object. They expected to produce a 50-50 cadre in about 15 years by which time the whole situation would again have to come under review by the Second Statutory Commission. As regards the Indian Police Service they recommended that of every hundred recruits for this Service, fifty should be Europeans recruited directly, thirty should be Indians recruited directly, and the remaining twenty obtained by promotion from the Provincial Services. And they expected that the corresponding cadre of 50-50 would be reached in about 25 years in the Police Service from the date when the new scheme of recruitment comes into operation. (See paragraphs 35, 37, pp. 18, 19 of the Lee Commission.)

74. I need not refer in detail to the recommendations as to the Indian Forest Service of Engineers, the Indian Agricultural Service, the Indian Veterinary Service, etc., and the Central Services which they discuss (see page 21, 23, of their Report).

The essential point which emerges from the White Paper is that " at the expiry of five years from the commencement of the Constitution Act a statutory enquiry will be held into the question of future recruitment for the Indian Civil Service and the Indian Police, and the Governments in India will be associated with the enquiry. The decision on the results of the enquiry will rest with His Majesty's Government and will be subject to the approval of both Houses of Parliament. Pending the decision to this enquiry the present ratio of British and Indian recruitment will remain unaltered. The question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination. His Majesty's Government hope to submit their recommendations on this matter later to the Joint Select Committee " (vide para. 72 of the Introduction to the White Paper).

75. The Services sub-committee of the first Round Table Conference made two important recommendations. In paragraph 2 they recommended

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that for the Indian Civil Service and the Indian Police Service recruitment should continue to be carried out on an All-India basis, but the majority of the Committee were of the opinion that recruitment for judicial officers should not longer be made in the Indian Civil Service, and the Indian Forest Service and the Irrigation branch of the Indian Service of Engineers should be provincialised. Mr. Shiva Rao and Mr. Tambe desired to record the view that all services should be Provincialised forthwith. Dr. Ambedkar, Mr. Zafrulla Khan and Sardar Sampuran Singh were averse to further recruitment on an All-India basis for the Indian Civil Service and the Indian Police Service save in respect of the European element in those Services. The majority of the sub-committee were of the opinion that in the case of these two Services it was desirable that some recruitment of Europeans should continue. On the question of the ratio there was a difference of opinion, some holding that for the present recruitment should continue on the lines laid down by the Lee Commission, while others would prefer that the matter should be left for decision by the future Government of India. Irrespective of the decision that might be reached as to the ratio, the majority of the sub-committee held that the recruitment and controlling authority in the future should be the Government of India. They would leave to that authority the decision of all questions such as the conditions of recruitment service, emoluments and control. A Minority thought that the recruiting authority should be the Secretary of State. But even they consider that adequate control over the members of the Services should be secured to the Indian and Provincial Governments under the Devolution Rules.

76. It seems to me that the provision in the White Paper for a Statutory enquiry after five years into the question of future recruitment for the Indian Civil Service (vide paragraph 72 of the Introduction) is inconsistent with provincial autonomy and responsibility at the Centre. I am personally in agreement with the views of the majority of the Sub-Governments of the future desire to have any European element in their The position that existed at the time of the Lee Commission has materially changed since the Round Table Conference was called. To give the provinces autonomy and the central government responsibility over a large field of administration and then to withhold from them the power of recruiting their Public Servants and exercising control over them, subject no doubt to ample and effective safeguards of their interests, is not only to deny a very material element of responsibility, but is also calculated to have undesirable effects on the mutual relations of the Services and the Indian Legislature and the Minister. Further the Indian Legislature of the future should be vitally interested in making every possible economy in public expenditure and there does not seem to me to be any valid reason why the future Government in India should be made to submit, in the case of future recruits, to the scales of salaries prescribed by the Secretary of State. It has been urged in certain quarters that the right type of English recruits will not be available for these Services unless they are recruited by the Secretary of State. If the Indian Governments of the future desire to have any European element in their Services they must be left free to exercise their option in the matter. It may be presumed that if they will want European recruits they will have to offer sufficiently attractive terms to them. Upon a broad view of the matter I urge that there should be no further examination of the question after five years by another Commission. I think effective decisions

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should be arrived at now and the question should no longer be left as an open one.

77. As regards the Superior Medical and Railway Services the recommendations of His Majesty's Government have not yet been placed before the Joint Select Committee, but I am generally in agreement with paragraph 44 of the Services Sub-Committee.

78. I have submitted above that in my opinion the recruiting authority, after the promulgation of the new Constitution should be the Government of India. It is only necessary to add that I am assuming that the Government of India will, for the purpose of recruitment, make use of the machinery of the Public Service Commission, and rely on their technical knowledge and impartial judgment and advice.

#### RIGHTS AND INTERESTS OF THE SERVICES.

79. No less important than the question of future recruitment is the question of the rights and interests of the Services. It is necessary to point out that the Statutory provision governing the rights and interests of the Services is to be found in Section 96B of the Government of India Act. Rules have been framed according to that section. The last set of Rules so far as I know were published in June, 1930, and are known as Civil Service (classification, control and appeal) rules. Most of the items in Appendix 7 of the White Paper are based on Section 96B of the Classification Rules. I have no desire whatsoever in any degree or measure to prejudice the Services in respect of their salaries, emoluments and pensions which must in my opinion be given every effective protection, but I would point out that the proviso to Section 96B and its provisions require to be analysed before a correct view of the position can be taken. Under that section the Secretary of State in Council has the power to make rules for (a) regulating the classification of the Civil Services in India, (b) the methods of their recruitment, (c) their conditions of service pay, allowance, and discipline and control. The rules referred to deal with these matters and the section itself provides that such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council, or to local Governments, or authorise the Indian Legislature or local Legislatures to make laws regulating the Public Services. It would thus appear that under the existing Act itself, the Secretary of State in Council could delegate his powers entirely if he liked in respect of the Services not only to the Government of India or the local Governments, but also to the Indian Legislature and the local legislatures. This was at a time when full Responsible Government was not set up in the Provinces and the Central Government contained no element of responsibility to the Legislature. It seems to me, therefore, that under the proposed constitution there should be an advance upon the position prescribed by the Section 96B of the Government of India Act. I feel that the proposals in the White Paper instead of being in advance constitute a distinct set-back at any rate for the time being.

80. Coming next to the proviso it will be noticed that according to it every person appointed before the commencement of the Government of India Act of 1919 by the Secretary of State in Council to the Civil Service of the Crown



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in India shall retain all his existing and accruing rights or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable. The Act therefore protects the existing or accruing rights of persons appointed *before* the commencement of the Government of India Act, 1919, apparently because officers appointed before 1919 entered the Service at a time when the policy of Parliament for the future Government of India as declared in the preamble of the Government of India Act, 1919, had not been declared. The men who joined the Service after 1919 must be presumed to know that policy and to realise that that policy would be fulfilled within a reasonable distance of time.

81. In this connection I would draw attention to question No. 187 on page 31 of the Minutes of Evidence, which I put to Sir Jon Kerr, and his reply to it.

*Question.* According to your view of the matter, do the men who entered the Civil Service, say in 1920, or at any time since 1920, stand exactly on the same footing in regard to these rights as the men who entered the Civil Service before 1919?

*Answer.* We do not say that they do under the law, because the law does make a distinction between persons appointed before and after 1919.

*Question.* I am asking you that, from your point of view, you think it expedient and desirable that those men should also get the protection that you yourself have had?

"We think it just that they should."

82. On grounds of justice and expedience I myself would not make any distinction between the pre-1919 and the post-1919 men so far as the conditions of their pay allowances, etc., are concerned. I am prepared to go further and say that if the pre-1919 men insist on control being exercised in respect of their discipline and conduct by the Secretary of State I would not object to this anomaly which would be of a temporary character, but in regard to all other officers I would strongly urge that the centre of control should be transferred from London to Delhi. Logically speaking their control should be in the hands of the Federal Government assisted by the Public Service Commission, but rather than have the control of the Secretary of State over these officers I would urge that it should be transferred to the Governor-General for some time to come who might similarly be assisted by the Public Service Commission, leaving it to the development of the Constitution to facilitate the transfer of the control to the Federation Government. In other words, I suggest that in respect of officers appointed after 1919 up to the date of the new constitution, and in respect of officers appointed after the setting up of the new constitution the Governor-General should be the final appellate authority for the time being leaving it again to the development of the constitution to transfer the control of the Governor-General at his discretion to the Federal Government.

83. The next important point which arises relates to the interpretation of the expression "accruing rights" in the proviso of Section 96B quoted above. In this connection I would draw attention to the despatch of the Secretary of State dated 26th April, 1923 (vide paragraph 81 of the Lee Commission Report—pages 46-48). The Secretary of State at that time consulted the law officers of the Crown, and he was advised by them that the words "accruing rights" in Section B96 (a) "means all rights to which members of the Civil Services are entitled, whether by statute or by rule having statutory force, or by regulation in force at the time of their entry into service. They do not, however, include prospects of promotion, except in case where the promotion is no more than advancement by seniority to increased pay, as in the case of the various appointments borne upon the

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ordinary lists of time-scales of pay. In particular, they do not apply to general expectations of possible appointment to offices, such as those of a Commissioner of a Division, which are not included in the ordinary time-scale lists, and the filling of which involves selection by merit. I am advised accordingly that the abolition of such appointments would give rise to no claims to compensation except to persons who were actually holding them at the time of their abolition. I am further advised that no method of filling such appointments which is not inconsistent with the Statute, even though it reduced the expectations of members of a particular service, would give rise to any claim to compensation on the part of any person whose actual tenure of an appointment was not thereby affected. I trust, therefore, that difficult as these words may be of interpretation, the authoritative opinion of the law officers of the Crown will be accepted. Appendix VII (e).

84. Coming then to the list of rights in Appendix 7 of the White Paper, it is not my intention to deal with each item separately. I have indicated my views in the preceding paragraphs as to the guarantees to be given to the Indian Civil Service as regards their pay, allowances, emoluments, leave, pensions, etc., and also as regards the transfer of the control over the post-1919 members of the Services from London to Delhi. There are just a few points that I shall now refer to.

85. Item No. 9 secures to the Services the reservation of certain posts to members of the Civil Service. This must be read with Section 98 of the Government of India Act and the third schedule to it. In the ordinary course, in the vast majority of cases, members of the Indian Civil Service will rise to occupy many of the appointments mentioned in the third schedule. But in the altered state of things there does not seem to be any reason why the reservations provided by the third schedule should continue to exist.

86. Item No. 11, which is based on Classification rule No. 25, further provided that posts borne on the cadre of All-Indian Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council. Whatever justification there might be for such a rule under the present system there does not seem to me to be any for continuing it in future when the Provinces will be autonomous and there will be responsible government both in the Provinces and at the Centre. The possibility of economy to be effected by appointing efficient men belonging to the Provincial Service to such vacancies should not be excluded.

87. Another "right" which calls for some remark is that contained in item No. 15. Ordinarily the proposals for the posting of an officer of an All-Indian Service proceed from the Chief Secretary of a local government, who has always been a member of the Indian Civil Service, and it may well be presumed that under the new scheme they will be dealt with by the Chief Secretary or some other Secretary and the Minister will have neither the time to go into nor the necessary knowledge about matters of this character. I should not presume that Ministers would deliberately act to the disadvantage of an officer of an All-India Service. I cannot, therefore, agree to the proposal that in such matters the personal concurrence of the Governor should be required. While I appreciate the desire to protect the Public Servants against loss or inconvenience resulting from unjust orders of posting, it seems to me to be necessary to bear in mind that nothing should be done to undermine the authority or the prestige of the Minister.

88. Another important matter which calls for notice is that contained in item No. 18, and that relates to the right of certain officers to retire under the regulations for premature retirement. The Lee Commission recommended that in the case of all future British recruits to the All-India

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Services, "a rule should be made and a clause inserted in their contracts to the like effect, that if and when, the field of service for which they have been recruited is transferred it shall be open to them either:—(a) to retain their All-India Status, or (b) to waive their contracts with the Secretary of State, and to enter into new contracts with the Local Governments concerned, or (c) to retire on proportionate pension; the option to remain open for one year, from the date of transfer." "This concession," the Lee Commission recommended, "should also be extended to all officers who joined the Services since January 1, 1920." It seems to me that item 18 of Appendix 7 goes beyond even this limit within which the option to retire on proportionate pension is to be exercised.

89. Two more points remain to be considered. It has been suggested in the memorandum of the Indian Civil Service Association that "the Governor-General or the Governor might be empowered, in view of a possible deficit, to issue such instructions to the audit officer or the authority responsible for arranging 'Ways and Means'; as would secure this result. 2. The family pensions and funds that have been established under rules framed by the Secretary of State, require equal protection. These rules have been framed under sub-section 4 of Section 96B of the Government of India Act, and as stated in paragraph 73 of the Introduction to the White Paper, the assets of these funds must be recognised as constituting a definite debt liability to the Government of India. The Indian Civil Service Association is strongly of the opinion that sterling funds should be established in England to give the liabilities arising under this heading a chance."

As regards 1, it is scarcely conceivable that the Indian Ministers will be so dead to their sense of responsibility in regard to the regular and punctual payment of the salaries of the Public Servants as is apprehended. Further it is feared that this view overlooks the constitutional position regarding the withdrawal of the money from the Treasury by the Ministers. It is difficult to believe that if a Minister wanted to draw money from the Treasury for any social services at the expense of funds reserved by the Legislature or by the Statute for other purposes, he would be allowed to do so.

If it is worth while having a new Constitution with a responsible Indian Government, it is also worth while trusting it to discharge those obvious obligations which will rest upon its shoulders. I need scarcely point out that the salaries of the All-Indian Services will be protected by the Statute and we may well presume that the Ministers will not be so foolish or reckless or devoid of a proper sense of their duty in the matter as to leave no money in the till for the payment of the salaries.

90. As regards the second point, I would refer to question No. 30 put by Sir Reginald Craddock to Sir Charles Fawcett, and his answer to it. (Pages 14-15 of No. 1 of the "Minutes of Unrevised Evidence.") The point was further elaborated by the witness, on page 18, as follows:—

"We cannot be sure that India will remain solvent, and that salaries and pensions will be forthcoming out of Indian revenues. We know that an influential section in India is flatly hostile to us, and constantly preaches that the payments due to England from India amount to a ruinous imposition and should be repudiated." They then refer to the example of Ireland and to Mr. Lang's government in New South Wales, which they say should be taken to heart, though they go on to say, that they do not distrust moderate and responsible Indians, but greatly distrust the extremist section and their policy that may impair the solvency of India under the new regime.

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91. Sir Samuel Hoare has pointed out that the figure including both military and civil pensions, is about £50,000,000 sterling. In fairness to the "extremists" in India I may point out that to the best of my knowledge they have never sought to repudiate the pensions of the Public Servants. In this connection I would recall what Mr. Gandhi himself said in his speech on the financial safeguards at a meeting of the Federal Structure Committee held on November 25, 1931.

"I want," said Mr. Gandhi, "to say that the Congress has never suggested, as it has been viciously suggested against it, that one single farthing of National obligations should ever be repudiated by the Congress. What Congress has further suggested is that some of the obligations which are supposed to belong to India ought not to be saddled upon India, but should be taken over by Great Britain." I have considered it necessary to quote this passage to show that in the first place the pensions of retired officers have never been repudiated, and in the second, the general charge against the Congress, that it repudiated the national debts, is not borne out by the statement of Mr. Gandhi. If Mr. Gandhi and the Congress want an examination of certain financial obligations, they cannot be seriously blamed when one remembers that it was upon the persistent representations of the Government of India in regard to India's liability for capitation charges, and some other claims, that a tribunal was appointed last year to investigate this problem. It submitted its report early this year, which is still engaging the attention of His Majesty's Government.

92. To come back to the main point it is out of the question and I cannot conceive the possibility of it, that the pensions of retired officers should be imperilled in any manner. Under the White Paper scheme the powers of the Secretary of State and the Governor-General are more than ample to enforce these obligations in the event of any breach. To impose, however, a condition that a capital sum of £50,000,000 sterling should be now invested in Trust Funds in England for this purpose would cripple the resources of the Government of India.

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#### PUBLIC SERVICE COMMISSION.

93. Paragraphs 195-201 deal with Public Service Commission. There will be a Federal Public Service Commission and a Provincial Public Service Commission for each Province, but by agreement the same provincial commission will be able to serve two or more provinces jointly. The principle of appointing the Public Service Commission is much to be commended. These Commissions should be absolutely independent bodies free from all political influences, possessing definite powers and discharging definite functions. I cannot, however, agree with proposal 196 which provides that the members of the Federal Public Service Committee will be appointed by the Secretary of State who will also determine their number, tenure of office, and conditions for service, including pay, allowances, and pensions, if any. No doubt this is quite consistent with the general policy regarding the Services adopted in the White Paper, a policy which seeks to preserve the authority and control of the Secretary of State over some of the Public Services for some time to come. I personally hold that while the Constitution should provide for the appointment of Public Service Commissions and possibly also for the qualifications of members to be appointed to them, the powers reserved to the Secretary of State under proposal 196 should



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be transferred to the Federal Government or at any rate to the Governor-General acting at his discretion for a short period not exceeding five years, after which the powers should devolve upon the Federal Government. The position taken in the White Paper in regard to the Public Service Commission does not seem to me to be in the nature of any advance upon the present position as laid down in Section 96C of the Government of India Act.

#### SECRETARY OF STATE'S ADVISERS.

94. Paragraphs 67-69 deal with the Secretary of State's advisers. It is proposed now to abolish the Secretary of State's Council and to enable the Secretary of State to appoint not less than three, and not more than six advisers (at least two of whom must have served the Crown in India for not less than ten years) to hold office for five years. The Secretary of State will be free to consult these advisers, either individually or collectively, as he may think fit. But he will be required not only to consult them, but to obtain the concurrence of a majority of them on the draft of any rules regulating the Public Services in India, and in the disposal of any appeal to him permitted by the Constitution, from any member of those Services.

We are further told that the conception of the Secretary of State in Council of India as a statutory corporation for legal or contractual purposes is wholly incompatible alike with Provincial self-government and with a responsible Federal Government. This being so, there is obviously no occasion for the maintenance of the Council of India, the Statutory duties of which are laid down in the existing Government of India Act. (See sections 21, 22, 28-32.)

It does not, therefore, seem that it is necessary for this purpose to have as many as three or six advisers for the Secretary of State. In view of the opinion which I have expressed in regard to Public Services, it seems to me that even the number of three admits of reduction.

#### JUDICATURE.

95. Part IV of the White Paper deals with the judiciary in India. It provides for (1) the establishment of the Federal Court. (2) The Supreme Court and (3) the maintenance of the Provincial High Courts. So far as the need for establishment of the Federal Court is concerned it is made out clearly and cogently in paragraph 62 of the Introduction. In a Constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on the one hand and the Legislatures and Executives of the federal units on the other, a Federal Court has always been recognised as an essential element. Such a court is, in particular, needed to interpret authoritatively the Federal Constitution itself.

It is proposed in the White Paper that the Federal Court should possess both an original and an appellate jurisdiction. Perhaps it may be necessary to revise the language of propositions 156-158. It is not intended to oust the jurisdiction of the Privy Council. All that is aimed at, and all that should be aimed at, is to restrict the right of appeal to the Privy Council, to such decisions of the Federal Court as may involve really important

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questions relating to the interpretation of the Constitution Act, or any rights and obligations arising thereunder. In such appeals it may not always be possible to go by the pecuniary value of the matter involved in the case; the true test should be the nature of the question involved, and no appeal should lie to the Privy Council ordinarily, without the leave of the Federal Court. This will not, however, affect the right of the Privy Council to grant special leave in any case in which they may deem it fit to do so.

96. It will be noticed that proposition 156 seeks to provide for an appeal from a decision of the High Court to the Federal Court, in any case which involves the interpretation of the Constitution Act, or a determination of any right or obligation arising thereunder. Presumably the Federal Court is intended in such cases to exercise jurisdiction over Courts in Indian States in cases of the above description.

97. Proposition 157 lays down that an appeal to the Federal Court will be by way of a Special Case on facts stated by the Court from which the appeal is brought. Procedure of this character is not unknown to Indian law; and one advantage in adopting this procedure may be that it will meet the point of view which has been put forward by some of the representatives of Indian States. It must be borne in mind that in India there is a large number of jurisdictions and this frequently gives rise to much confusion. There is a very wide difference between the jurisdiction of the Revenue Courts and that of the Civil Courts, and in some provinces legislation has been passed providing for reference to a civil court in a case pending before a Revenue Court, which involves the determination of an issue of title. On the whole this procedure has worked well, and I take it that proposal 157 is an adaptation of that procedure. Reference may also be made to the ordinary practice in Income Tax cases in India, where under certain circumstances a question of law is stated by the Income Tax authority for the opinion of the High Court. I am, therefore, prepared to support the principle involved in proposition 157.

98. Attention may in particular be drawn to two other proposals—160 and 161. The former provides that “the process of the Federal Court will run throughout the Federation, and within those territories all authorities, civil and judicial, will be bound in any place within their respective jurisdictions to recognise and enforce the process and judgments of the Federal Court; and all other Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves.” It has been suggested on behalf of the Indian States, that when a matter relates to an Indian State the order of the Federation should be executed, not in the ordinary manner in which the orders of an appellate Court are executed by Courts subordinate to it, but by reference to the Executive authority of the State concerned. In the memorandum presented on behalf of the Chamber of Princes by Mir Maqbool Mahmood, Dr. P. K. Sen, and Mr. K. M. Panikkar, they say “It seems desirable to provide that in the case of judgment against a federating State, the remedy should be sought only from the Government of the State concerned.” In the case of a State failing to execute the judgment of the Federal Court, within a reasonable time, the authority of the Viceroy could be invoked.” This suggestion seems to me to be wholly opposed to the basic principle underlying Federation and to the whole recognized Judicial procedure governing the enforcement and execution of the orders and judgments of Superior Courts by subordinate Courts. It should not be for the government of the State concerned or, in the last resort, for the Viceroy, to attend to the enforcement of the orders of the Federal Court; it should be left

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to the State Courts themselves. Conformity to the ordinary practice will not, in my opinion, be any invasion of the sovereignty of an Indian State, in as much as upon a proper view of the matter, the Federal Court will not be foreign court, but will be as much a British Indian Court as an Indian State's Court.

99. I would strongly support the provisions of proposition 161 which give the Governor-General the power to refer to the Federal Court, for the hearing and consideration in any justiciable matter which he considers of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it. Advisory jurisdiction is already exercised by several High Courts in India, and it may be a very beneficial jurisdiction for the development of the Federal Constitution.

#### THE SUPREME COURT.

100. That there is a general demand for the establishment of a Supreme Court, seems to me to be without any doubt. I am at the same time bound to point out that opinion in Bengal is not favourable to it. The question was discussed at length at the Round Table Conference. The immediate establishment of the Supreme Court is opposed first, on the ground of finance and secondly, on the ground that it is not desirable to abolish the jurisdiction of the Privy Council. As regards the first no estimate has been prepared showing the impossibility of establishing the Supreme Court within reasonable limits of expenditure. I cannot believe that we can require as many as twenty to thirty judges for the Supreme Court. I should think that for some time to come a Court consisting of ten to twelve judges could adequately deal with appeals coming to it from the High Courts. Further it may be pointed out that much of the cost will be met by fixing proper scales of Court fees. The highest number of appeals that come up to the Privy Council from India in any given year may roughly be put down as 100 to 125, though the number is generally less. However, if we treble this number of appeals to the Supreme Court, a Court of twelve judges should not find it difficult to cope with the work. Further it should be possible to restrict the number of appeals to the Supreme Court by making other suitable provisions, or by raising the pecuniary appealable limit. As regards the second ground, namely, that it is undesirable to abolish the jurisdiction of the Privy Council, it has never been suggested that the jurisdiction of the Privy Council should be abolished. Even in the case of the Dominions, appeals come very frequently from Canada, and they come also, though less frequently from the other Dominions. What is suggested is that appeals should lie to the Privy Council only upon a certificate given by the Supreme Court.

101. As regards appeals in criminal cases paragraph 166 provides appeals in such cases where a sentence of death has been passed, or where an acquittal on certain criminal charges has been reversed by a High Court. I apprehend that appeals in criminal cases where a sentence of death has been passed may tend to overburden the Supreme Court. I would suggest that for the present the Constitution should provide for appeals where an acquittal on a criminal charge has been reversed by a High Court, and to cases where leave to appeal to the Supreme Court has been given by the High Court.

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102. It seems to me that it would be most unfortunate to have two separate courts, namely (a) a Federal Court and (b) a Supreme Court. Such an arrangement would, of necessity, entail separate expenditure on separate judges, and their staffs, apart from separate non-recurring expenditure. A single court sitting in two divisions with a common Chief Justice possessing the power to constitute benches for federal work, and also for hearing appeals from British India, will contain a variety of talent and experience and thus command public confidence in a greater degree than a small Federal Court doing purely federal work. It must be recognised that in India one of the great evils of the judicial system is the number of the High Courts, which leads at times to deplorable divergence in judicial opinion and legal practice. This might easily become worse if federal or constitutional questions were to be decided by different courts in different ways. It seems, therefore, necessary that there should be a single final Court of Appeal, doing its work in two divisions and maintaining uniformity of interpretation of the laws and enforcing uniform legal and judicial standards.

#### THE HIGH COURTS.

103. The High Courts existing in India at present are governed by the Government of India Act, Section 101-114. Each of the High Courts has superintendence over all Courts, subject to its jurisdiction. Its powers are defined by Section 107 of the Government of India Act. "The several High Courts are courts of record for such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act." (See Section 106.)

104. The qualifications for the judges are provided by Section 101 of the Government of India Act. Proposal 170 of the White Paper provides that the qualifications for appointment as a Chief Justice or a judge will remain as at present, but the existing provision, which requires that one-third of the Judges must be members of the English Bar or the Faculty of Advocates in Scotland, and that one-third must be members of the Indian Civil Service will be abrogated. This is certainly an advance on the present law which has created vested interests in favour of certain classes of lawyers or public servants. Whatever justification there might have been at one time for such an arrangement, it has ceased to exist now in view of the development of an indigenous Bar within the last seventy-five years or more, and the organisation of Provincial Judicial Services. Public opinion will expect that there must be at least one Court in India composed exclusively of experienced lawyers and I urge accordingly that the Supreme and Federal Court, if not, at present, the High Courts, should consist of Judges recruited exclusively from the ranks of the Bar or of High Court Judges of distinction who are barristers or advocates. The last part of proposal 170 in the White Paper provides that any person qualified to be a Judge, will be eligible for appointment as Chief Justice. Hitherto it has always been the practice to appoint a barrister as Chief Justice, and what is needed



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now is that, the difference between barristers and local advocates should be done away with. It would, however, be unfortunate if the appointment of Chief Justice were thrown open to non-legal element. The best traditions of the courts in India have been built up by Judges recruited from the profession, men who have imbibed in the exercise of their profession, and their surroundings in England, or by judges who have been recruited from the ranks of the profession in India. I should not be willing to accept any change in the law which would in any degree or measure affect the continuance of those traditions. It does not necessarily imply any reflection on the Indian Civil Service or the Provincial Service, both of which have produced some very distinguished Judges. But the fact remains that both the legal profession and the public have been accustomed to look upon the Chief Justice as the one man in the Court who gives a tone to it, and is responsible for upholding those judicial traditions of independence, which are absolutely necessary for the good repute of the Court. I need scarcely say that the same remarks will apply to Judges of the Federal and the Supreme Court.

105. In point of fact so far as the Civil Courts are concerned the High Courts exercise a direct supervision over their work, but there is very little of direct supervision exercised by them over the criminal courts. I understand, however, that in one province in recent years, the High Court has been exercising supervision over criminal courts. In my opinion public confidence in the administration of criminal justice is bound to increase if such supervisory control is transferred to the High Court.

As regards the appointment of Judges on the civil side the usual practice is for the High Courts to recommend the appointment of fresh candidates to the lowest grades of civil Judges, called Munsifs, and in some provinces subordinate judges of second class. The appointments are, however, made by the local Governments themselves. This does not apply to District Judges belonging to the Indian Civil Service. The High Court may be consulted in regard to their selection, but in actual practice its powers are limited. In order to secure the appointment of right men, possessing the necessary qualifications it is suggested that the appointment, selection, promotion and control of the Judicial side of the Services, should be transferred to the High Courts themselves. This should also effectively prevent the evils of patronage. If the judicial and executive functions of magistrates can be separated, as they should be, the High Courts may also be given similar functions and powers in respect of the Magistrates.

106. Lastly there is the question of the relation of the High Courts to the local Governments. All the High Courts except Calcutta, are in direct relation with their respective local Governments, in other words, the local Governments hold themselves responsible for the expenditure and budget of the High Courts. As regards the appointment of the Judges—they are appointed in England by the Secretary of State. If a member of a local bar or a member of the Indian Civil Service, or the Provincial Judiciary is to be permanently appointed to any seat on the bench, the local Government, after consulting the Chief Justice and the High Court, submits his name to the Government of India who finally approaches the Secretary of State.

107. The legal position is that every permanent Judge is appointed by the Crown. The Statute, however, makes exception in the case of an additional Judge who can be appointed only by the Governor-General in Council. Acting and temporary Judges are appointed by the local Government concerned. It is submitted that in order to more effectively safeguard the position of the Judges it is desirable that all the High Courts

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should be brought into direct relationship with the Central Government. The importance of the matter, will, in my opinion, justify what may seem to be a diminution of the autonomy of the Provinces. I have very strong reasons to believe that very high judicial and legal opinion in many of the Provinces favours such a course.

After concluding my note on this subject, I received Confidential Memorandum A. 21 on the Judiciary. I have gone through it very carefully, and if I may say so it is a fair and complete statement of the present position in India. On the question of the federalization or provincialization of the High Courts, however, I see no reason to modify the opinion that I have expressed above. Most of the objections raised to the centralization of the High Courts are of an administrative character, and it does not seem to me that it is impossible to surmount them. At any rate I should not sacrifice the question of principle to the considerations of administrative convenience and financial arrangements, which though difficult in some cases, should not be considered as presenting any insurmountable difficulty in the way of the necessary reform.

#### RESERVED DEPARTMENTS: DEFENCE AND FOREIGN AFFAIRS.

108. Among the propositions which I formulated at the commencement of this note as constituting the essential elements of the Constitution, the third and the fourth are as follows:—

(3) The Reserved Subjects, namely, the Army, and Foreign Affairs, to be under the control of the Governor-General only for the period of transition, which should not be long or indefinite.

(4) A definite policy to be adopted and acted upon in respect of the Reserved Department so as to facilitate their transfer to the control of the Indian Legislature and the Government within the shortest possible distance of time, compatibly with the safety of the country and the efficiency of administration in those departments.

The first Round Table Conference appointed a Sub-Committee presided over by Mr. J. H. Thomas. The first resolution at which it arrived was as follows:—

“The Sub-Committee consider that with the development of the new political structure in India, the Defence of India, must be to an increasing extent the concern of the Indian people, and not of the British alone.”

The second resolution which it arrived at was passed in order to give practical effect to the first resolution, and provided:—

(a) “that immediate steps be taken to increase substantially the rate of Indianization in the Indian Army to make it commensurate with the main object in view, having regard to all relevant considerations, such as the maintenance of the requisite standard of efficiency.” Mr. Jinnah dissented and desired a clear indication of the pace of Indianization.

(b) “that in order to give effect to (a) a training college in India be established at the earliest possible moment, in order to train candidates for commissions in all arms of the Indian Defence Services. This college would also train prospective officers of the Indian State Forces. Indian cadets should, however, continue to be eligible for admission as at present to Sandhurst, Woolwich, and Cranwell.

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(c) "that in order to avoid delay the Government of India be instructed to set up a Committee of Experts both British and Indian (including representatives of Indian States) to work out the details of the establishment of such a college.

The Sub-Committee also arrived at the following resolution:—

"The Committee also recognise the great importance attached by Indian thought to the reduction of the number of British troops in India to the lowest possible figure and consider that the question should form the subject of early expert investigation."

The sixth paragraph of the Thomas Report is as follows:—

"In agreeing to the foregoing recommendations the Committee were unanimous in their view that the declaration must not be taken as a mere pious expression of opinion, but that immediately the Conference was concluded, steps should be taken to deal effectively with the recommendations made."

The last paragraph of the Report recognised the advisability of establishing a Military Council including representatives of the Indian States.

109. After the Report of this Committee the Government of India appointed a committee in India which was known as the Indian Military College Committee, and which was composed of military officers and Indian non-officials (including representatives of the Indian States), the Commander-in-Chief being the chairman of the Committee. This Committee submitted its Report on 15th July, 1931, and as a result of its recommendations a college was recently started at Dehradun, and it has been decided to Indianize two divisions experimentally.

110. The Report of the Indian Military College Committee contains the minutes of the various Indian members, and I would say that I am in general agreement with the minute of Sir P. S. Sivaswamy Aiyer and Major-General Raja Ganpat Rao Raghunath Rao Rajwade of Gwalior. At page 80 of the Report they express themselves as follows:—

"Indians are quite alive to the necessity for maintaining the efficiency of the Army and to the importance of not imperilling the safety of India. They are, however, naturally anxious to assume responsibility for the control of the Army within a reasonable period. What then is a reasonable period for the Indianization of the officers' ranks? It has been pointed out that even if British recruitment to the officers' ranks were stopped to-day it would take 35 years for the Army to be completely Indianized. The Shea Committee of 1922, which was appointed by Lord Rawlinson, first recommended a period of 43 years, but on further consideration submitted the shorter period of 30 years, which was unanimously accepted by the Government of India as then constituted, including Lord Rawlinson. The refusal of the military authorities and the British Government to commit themselves to any indication of the probable period of Indianization, subject to the necessary conditions of efficiency and the availability of suitable candidates, is one which it is impossible for Indians to appreciate. They refuse to contemplate the contingency of India proving unequal to the task of defending herself within a reasonable period. That the country is now unable to defend itself no one is concerned to deny. But we believe that, if the policy of Indianization were started in right earnest and carried out on sound national lines, it should be possible for us to train ourselves to undertake

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the responsibility for defence within a period of something like 35 years.\* If the Empire had to face the danger of another world war on the same scale as the Great War, there can be little doubt that England would be obliged to train India for her own defence within a much shorter period."

111. While agreeing to the reservation of the Army and foreign affairs, Mr. Jayakar and I put forward certain definite views in regard to certain matters connected with these reserved departments, and we submitted a memorandum which is printed at page 194 of the Indian edition of the Report of the Third Indian Round Table Conference. For the convenience of the Joint Parliamentary Committee I would quote paragraphs 14-15 from that Memorandum.

"We next come to the question of defence. We think that the success of the proposed constitution will be judged in India very largely by the policy which His Majesty's Government will adopt towards defence. We are of the opinion that the Statute or the Instrument of Instructions, if the latter is to have a statutory basis, as we think it should have, should recognise the principle laid down in the Report of the Thomas Committee that the defence of India should be to an increasing degree the concern of India, and not of Great Britain alone. We also urge that consistently with this principle and in order to implement the same, a duty should be cast on the Governor-General to take every step to Indianize the Army within the shortest possible period compatibly with the safety of the country and the efficiency of the Army. This would, in our opinion, necessitate the preparation of a programme more or less on the lines of the Rawlinson and other Committees' Reports, to which attention was drawn during the deliberation of the Thomas Committee on Defence. A definite time should be kept in view for this purpose, the duration of which should be adjusted according to the experience gained.

"While during the period of transition, which we do not envisage to be a long one, the Governor-General will have the control of the Army and the Army Budget may not be put to the vote of the Legislature, we strongly urge the adoption of the following proposals:—

"(a) The Army member, though appointed by the Governor-General and responsible to him, should be selected from among the members of the Legislature representing British India and the Indian States. We think that this cannot be regarded as an undue restriction of the discretion of the Governor-General, as the Indian Legislature will consist of at least 500 representatives, if not more, and it should not be difficult for the Governor-General to find a suitable person out of so large a number. Such a member will carry great weight and influence with the Legislature and will act as a bridge between the Governor-General and the Legislature, and will, in our opinion, be able to enlist the interest of the Legislature in the Army much more effectively than an outsider. Besides it will enable members of the Legislature to acquire knowledge and experience so that when the period of transition ends and defence has to be transferred to Indian control, the shoulders that will bear the burden may be found prepared to take it up.

\* I must not be understood to imply that I agree to the period of 35 years. It might easily be less and we must not lose sight of the ground already covered.



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"(b) It is not enough, in our opinion, that there will be consultation between the Finance Department and those responsible for defence. We therefore urge that provision should be made in the Statute or the Instrument of Instructions placed on a statutory basis as suggested above, for the appointment of a Committee consisting of (1) the Army member and such other representatives of the Army Department as the Governor-General may appoint, and (2) The Prime Minister, the Finance Minister, and such other members of the Federal Government as the Prime Minister may appoint, to discuss and arrive at an annual settlement of the Army Budget. We are agreed that failing such settlement the Governor-General should have power to arrive at a final decision as regards the budget.

"(c) The Army estimates should, in our opinion, be put in separate blocks before the Legislature annually, and this should be independently of the consent of the Governor-General.

"(d) The Indian Army should not be sent out of the limits of India without the consent of the Legislature for any purpose not directly connected with the defence of India.

"(e) The Army should be thrown open to all subjects of His Majesty, irrespective of class, creed, or community.

"(f) We strongly urge that a Committee should be appointed consisting of British and Indian experts for further exploring all avenues for the reduction of military expenditure to a level as near as possible to that existing before the War. We are strongly of the opinion that there is room for further economy in Army expenditure. While we recognise that the expenditure on the Army is in the nature of an insurance for the safety of the country, we think it must be limited by the taxable capacity of the people and the needs and requirements of the moral and material progress of the people of the country.

"(g) We urge also that the expansion, upkeep, and maintenance of military schools, and colleges should be committed to the charge of the Legislature.

"(h) We trust that the decision of His Majesty's Government on the question of the reduction of British troops in India, which on financial grounds cannot be postponed much longer, will soon be announced."

Paragraph 38 of the Introduction to the White Paper provides that "the Budget will be framed by the Finance Minister in consultation with his colleagues and with the Governor-General. The decision as to the appropriations required for the Reserved Departments and for the discharge of the functions of the Crown, in relation to the Indian States, will, of course, be taken by the Governor-General on his own responsibility, though he will be enjoined by his Instrument of Instructions to consult his Ministers before reaching any decision on appropriations for the Department of Defence." While I appreciate the value of consultations on the lines suggested in the extract quoted above, I feel that this provision is inadequate and should be supplemented by a further provision to the effect that during the period of transition, the representatives of the Governor-General and of the Federal Government appointed by the Federal Minister shall meet together to discuss and if possible to agree upon Defence Expenditure, and that if they fail to come to any agreement, the Governor-General's decision shall be final. This may obviate a resort to the procedure laid down in paragraph 39 of the Introduction to the White Paper, which is very much

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similar to the present procedure of certification. I do not think an arrangement of this character can really have the effect of dividing the responsibility of the Governor-General for defence, as his decision will in any case be final. It will in my opinion materially tend to foster an element of compromise and co-operation between the two sides of the Government and to the extent, at any rate, to which the Federal Government will be a party to any decisions regarding defence expenditure the Legislature's support may well be counted upon.

112. As regards the other suggestions made in the joint memorandum of Mr. Jayakar and myself, from which I have quoted above, I note with regret that no decisions have been arrived at or at any rate announced.

Although the White Paper does not deal specifically with such question as Mr. Jayakar and I raised in our memorandum, yet I am bound to say that we look upon the entire question of the constitution as a single whole including questions relating to Defence.

#### FOREIGN AFFAIRS.

113. As regards Foreign Affairs it was suggested by some of the members of the Round Table Conference that there were certain matters which came under the domain of Foreign Affairs such as the appointment of commercial agents, consuls, trading agents, and which might easily be transferred to the Federal Government at the start.

Questions relating to tariffs or the position of Indians in foreign countries are so intimately connected at times with Foreign Affairs, that if the Legislature is altogether excluded from discussing Foreign Affairs, it might find itself at times unable to deal with those questions. Indian opinion is, as is well known, very much interested in tariffs, and the position of Indians overseas. In point of fact such questions can be discussed in the Legislature under the existing Constitution, and it would be in my opinion a distinct set-back if a discussion of them was barred out under the new Constitution. It would be a different thing if questions relating to peace and war between one country and another were treated on a separate footing, but it seems to me that to lay down a general provision to the effect that the discussion of Foreign Affairs will be absolutely outside the purview of the Legislature, is to impose a serious disability on it, and to affect its utility.

I therefore suggest that the Legislature should not be barred, even during the transitory period, from a discussion at least of certain questions coming under the general phrase "Foreign Affairs."

#### INDIA'S POSITION IN THE LEAGUE OF NATIONS AND HIGH COMMISSIONER'S APPOINTMENT.

114. I would urge that the whole subject of foreign affairs requires to be carefully dissected. Take for instance the question of commercial treaties between India and other countries. There does not seem to be any reason why the Federal Government, possessing fiscal autonomy, should not be

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at liberty to enter into commercial treaties and agreements with other countries. Another illustration is furnished by the manner in which India is at present represented at the League of Nations, of which she is an original member, and at the other international Conferences. The representatives are appointed by the Governor-General in consultation with the Secretary of State. It is only during the last 4 or 5 years that the Government of India have been deputing one of their members. It would be most inconsistent with the dignity of the Federal Government and its credit with, and status in international gatherings if it were not represented by men appointed by the Federal Government itself.

115. Lastly I may point out that the White Paper says nothing as to how the High Commissioner is to be appointed in the future. At present his appointment is regulated by Section 29A of the Government of India Act, and powers are delegated to him by the Secretary of State for India, or the Secretary of State in Council, in relation to making contracts. The High Commissioner's position is in certain respects semi-diplomatic. In the constitution for the Dominions there is no provision for the appointment of High Commissioners for the very obvious reason that their governments have the right of appointing their High Commissioners. If the omission in the White Paper to deal with this matter implies that in future the High Commissioner will be appointed by the Governor-General on the advice of his ministers, then I have no criticism to offer; I am only anxious that the High Commissioner, should in future owe his appointment to the Government of India, and that his powers and duties should be similar to those of the High Commissioners of the Dominions.

116. In answer to a question put by me, Sir Samuel Hoare made the following statement in the course of his evidence. "In the case of the Reserved Departments taking in particular by far the most important case, the case of Indian Defence, I have always thought that the problem of Indian Defence depends, to a great extent upon the Indianization of Indian defence, and there we are embarking upon a programme of gradual Indianization. As the defence of India becomes Indianized, so the particular justification for the reservation of a defence Department will more and more cease to exist, and the solution, therefore, of the reservation of defence, subject always to the rights of the Princes under the Treaties, will depend, to a great extent, upon the progress of the Indianization of defence."

He further added that the transfer of defence could only be effected by an Act of Parliament.

Now while I appreciate the spirit in which Sir Samuel Hoare made this statement I cannot help feeling that in the absence of any definite and steadily growing programme of Indianization, the transfer of the control of defence to the Indian Legislature must continue to be a matter for an uncertain future. This is precisely the objection which Indian opinion has to a policy of an uncertain character which is incapable of being interpreted in terms of a foreseeable future and which must therefore have the effect of keeping India on a lower plane of its political existence and status than that occupied by any other Dominion.

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## PROVISION FOR THE GROWTH OF THE CONSTITUTION.

117. Sir Samuel Hoare has developed this point in the course of his evidence on two or three occasions. At one place he states as follows:—

“I should have thought the whole basis of these proposals was a basis of development. What I imagine, anyhow what I hope will happen, will be that the two sides of the Government will work closely and sympathetically together, that year by year the Governor-General and the Governor will have less and less reason to intervene in the field of his special responsibilities, owing to the fact that the Ministries themselves will be ensuring that the rights contemplated in the field of special responsibilities are safeguarded, and that, just as in other parts of the Empire, as the Governments develop, so powers of that kind fall into desuetude, not because the powers are unnecessary, but because the Ministries themselves carry those powers into effect, and I hope and believe that that is what is going to happen in India. In course of time, other Acts of Parliament will be necessary, more to recognise a state of affairs that is in existence than to make actually new changes. That is the way I hope and believe the kind of Constitution that we are discussing is going to work in the case of India.”

I have quoted this very important statement of Sir Samuel Hoare to show that he is very naturally laying stress upon the organic growth of the constitution, but I venture to point out that when the statute itself reserves certain departments, and places responsibility for their administration on the Governor-General, no constitutional developments short of an amending Act by Parliament can at any time shift the centre of responsibility from the Governor-General to the Legislature.

## CONSTITUTIONAL POSITION OF INDIA WITHIN THE BRITISH COMMONWEALTH OF NATIONS.

118. The last essential element of the constitution which is referred to in paragraph 2 of this memorandum, relates to the constitutional position of India within the British Commonwealth of Nations, and the necessity for its declaration in the Statute. The preamble of the Government of India Act provides that “it is the declared policy of Parliament to provide for the increasing association of Indians with every branch of Indian administration, and for the gradual development of self-government, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire.” It then says that “this policy can be achieved by successive stages” and reserves the right of determining the time and manner of each advance, to Parliament. The action of Parliament, according to the preamble must be guided by the co-operation received from those upon whom new opportunities of service are conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility. Section 84A of the same Act provides for the appointment of a Statutory Commission at the expiration of 10 years, from the date of the Act, for making enquiries into “the working of the system of Government, the growth of education, and the development of representative institutions in British India, and matters connected therewith.” The Commission was to report as to whether and to what extent “it is desirable to establish the principle of responsible government, or to extend or modify or restrict the degree of responsible government then existing



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therein, including the question whether the establishment of Second Chambers is or is not desirable." By an amendment of the Statute, authorising Parliament to establish such a Commission before the expiry of 10 years, Parliament appointed the Commission in 1927 which was presided over by Sir John Simon. This Commission visited India twice between 1928-1929. Meanwhile considerable doubt had been raised in India as to the meaning of the preamble quoted above, and as to the aim and objective of Parliament. Indeed it had been suggested authoritatively in the Legislative Assembly that what Parliament intended to give India in course of time, was Responsible Government, and not Dominion Status. During the summer of 1929, His Excellency, Lord Irwin, who was then the Viceroy of India, paid a visit to England. Upon his return to India, he made a public announcement on 31st October, 1929. "With the full consent of the Chairman of the Statutory Commission His Majesty's Government had decided to call a Round Table Conference consisting of 'representatives of different parts and interests of British India and representatives of the Indian States' for the purposes of conference and discussion in regard both to the British Indian and All-Indian problems". In the course of his announcement Lord Irwin referred to the goal of British policy as stated in the declaration of August, 1917, and pointed out that his own Instrument of Instructions from the King-Emperor expressly stated that "it is His Majesty's will and pleasure that the plan laid down by Parliament in 1919 should be the means by which British-India may attain its due place among his Dominions." "The Ministers of the Crown, moreover, have more than once publicly declared that it is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and India regarding the interpretation to be placed on the intentions of the British Government in enacting the statute of 1919, I am authorised on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the Declaration of 1917, that the natural issue of India's Constitutional progress as there contemplated is the attainment of Dominion Status."\* This Declaration created a very considerable impression in India at that time, but unfortunately certain speeches delivered during the debate which took place within a few days of it in Parliament, again caused a great deal of anxiety in India. Mr. Baldwin himself expressed his anxiety over the terms Dominion Status, but he went on to say, "when self-government or responsible government in India is obtained, what is to be the position of India in the Empire? None can say when Responsible Government will be established, or what shape it will take. These things will be determined by forces we could not control, British Indian, and world forces. Could there be any doubt in any quarter of the House that the position of India with full Responsible Government in the Empire, whatever form it may take, must be one of equality with other States in the Empire?"

"Nobody knows what Dominion Status would be when India has Responsible Government, whether the date would be near or distant. No one dreamt of a self-governing India without a self-governing status. No Indian dreamt of an India with an inferior status because that would mean we had failed in our work in India. No Tory Party, with which he (sic) was connected would fail in sympathy and endeavour to help in our time

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\* The italics are mine.

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to the uttermost extent of our ability in the solution of the great political problem which lay before us to-day." (Hansard, November, 1929.)

119. I am not however overlooking the fact that at that time some correspondence passed between the Prime Minister and Mr. Baldwin, who was then the Leader of the Opposition, but all that that correspondence came to, was, as pointed out by Mr. Wedgwood Benn, in his speech in the debate in the House of Commons, on 18th December, 1929, that so far as the Statute was concerned there was no change, but that there was of course the change in procedure. Of course the Statute stands, but with it must be taken the interpretation put on it by Lord Irwin with the authority of His Majesty's Government. I submit it constitutes a definite pledge and India is entitled to take her stand on it.

120. The circumstances under which the first Round Table Conference was held in England are well-known to the Joint Parliamentary Committee, but I would draw attention at this stage to the entire declaration of His Majesty's Government made at the conclusion of the first Round Table Conference. I shall in particular quote the following passages from that declaration:—

"The view of His Majesty's Government is that responsibility for the government of India should be laid upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances and also with such guarantees as are required by minorities to protect their political liberties and rights.

"In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government.

"His Majesty's Government has taken note of the fact that the deliberations of the Conference have proceeded on the basis, accepted by all parties, that the Central Government should be a Federation of All-India, embracing both the Indian States and British India, in a bi-cameral legislature. The precise form and structure of the new Federal Government must be determined after further discussion with the Princes and representatives of British India. The range of subjects to be committed to it will also require further discussion, because the Federal Government will have authority only in such matters concerning the States as will be ceded by their Rulers in agreements made by them on entering into Federation. The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy.

"With a Legislature constituted on a federal basis, His Majesty's Government will be prepared to recognise the principle of the responsibility of the Executive to the Legislature.

"Under existing conditions the subjects of Defence and External Affairs will be reserved to the Governor-General, and arrangements will be made to place in his hands the powers necessary for the administration of those subjects. Moreover, as the Governor-General must, as a last resort, be able in an emergency to maintain the tranquillity of the State, and must similarly be responsible for the observance of the constitutional rights of Minorities, he must be granted the necessary powers for these purposes.

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"As regards finance, the transfer of financial responsibility must necessarily be subject to such conditions as will ensure the fulfilment of the obligations incurred under the authority of the Secretary of State for India and the maintenance unimpaired of the financial stability and credit of India. The Report of the Federal Structure Committee indicates some ways of dealing with this subject, including a Reserve Bank, the service of loans, and the Exchange policy, which, in the view of His Majesty's Government, will have to be provided for somehow in the new constitution. It is of vital interest to all parties in India to accept these provisions, to maintain financial confidence. Subject to these provisions the Indian Government would have full financial responsibility for the methods of raising revenue and for the control of expenditure on non-reserved services."

In winding up the proceedings the Prime Minister spoke as follows:—

"Finally I hope, and I trust, and I pray, that by our labours together India will come to possess the only thing which she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities, and the cares, the burdens and the difficulties, but the pride and the honour of responsible self-government."

121. In consequence, a White Paper was presented to Parliament and a motion was put forward which was carried. The first Round Table Conference was followed by a second, which was held from 17th September to 1st December, 1931. At the plenary session held on 1st September, 1931, the Prime Minister repeated the salient sentences of the Declaration made by the first Round Table Conference, and went on to observe as follows:—

"With reference to Central Government I made it plain that, subject to defined conditions, His Majesty's Government were prepared to recognise the principle of the responsibility of the Executive to the Legislature, if both were constituted on an All-India Federal basis. The principle of responsibility was to be subject to the qualification that, in existing circumstances, the Defence and external affairs must be reserved to the Governor-General, and that in regard to finance such conditions must apply as would ensure the fulfilment of the obligations incurred under the authority of the Secretary of State, and the maintenance unimpaired of the financial stability and credit of India?"

122. There was again a White Paper presented, and again a debate took place in Parliament. The important point to note is that the policy of the Labour Government initiated at the first Round Table Conference was endorsed by the new National Government which comprised all political parties in England. The second Round Table Conference decided to set up certain committees to examine certain questions, such as Federal finance, the representation of the Indian States, and Franchise. These Committees went out to India, worked for several months, and submitted their reports. Then came the third Round Table Conference held last year, which submitted its report after carefully investigating certain details.

It will thus appear that the process of examination has already covered a considerable time both in India and England, and early decisions are anxiously awaited in India.

16<sup>o</sup> Novembris, 1938.]

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## PROGRESS BY SUCCESSIVE STAGES.

123. It might be urged that the preamble of the Government of India Act, 1919, provides for an advance by successive stages, and that it does not commit Parliament to a pledge of Dominion Status in favour of India. As regards the successive stages, I submit that India has already covered a number of these stages, and indeed the constitution foreshadowed in the White Paper also represents a stage, which I hope will be treated as a penultimate stage, the final being "reached when responsible government will be completed by the transfer of the control of defence and foreign affairs to the Federal Legislature. In a speech which Lord Chelmsford delivered in 1921 to the Indian Legislature when his Royal Highness the Duke of Connaught performed the opening ceremony of the Legislature, his Lordship reviewed the entire history of constitutional development in India, which, he said, fell into certain well-defined stages. The first of these, according to him, terminated in the Act of 1861; the second with the Act of 1892. The third stage was associated with the names of Lords Morely and Minto, and the fourth stage opened in 1921 with the inauguration of the constitution associated with the names of Mr. Montagu and Lord Chelmsford himself. In concluding his speech, Lord Chelmsford said that "a continuous thread of action links together the Act of 1861 and the Declaration of August, 1917. In the last analysis the latter is only the most recent and most memorable manifestation of a tendency that has been operative throughout British rule. But there are changes of degree so great as to be changes of kind, and this is one of them. For the first time the principle of autocracy, which had not wholly been discarded in all earlier reforms, was definitely abandoned; the conception of the British Government as a benevolent despotism, was finally renounced, and in its place was substituted that of a guiding authority whose role it would be to assist the steps of India along the road that, in the fullness of time, would lead to *complete self-government*.\* In the interval required for the accomplishment of this task, certain powers of supervision, and, if need be, for intervention, would be retained, and substantial steps towards redeeming the pledges of the Government, were to be taken at the earliest possible moment."

124. More than 12 years have elapsed since Lord Chelmsford spoke thus, and I submit that, having regard to the stages through which India has already passed, to the new consciousness in the country and to the change in the outlook of the people to which distinguished administrators like Sir Charles Innes and Sir John Thompson, who were in India until a few months ago, have borne testimony, any further prolongation of the stages or periods of probation can only result in diverting the attention and energy of the people of India from fruitful constructive channels, to agitation, struggle, dissipation of energies and increasing estrangement between the Government and the people. It would be disastrous if the next stage was to be that of advance in the provinces and the centre was left unchanged. As I have indicated above, the constitution must cover both the provinces and the centre, if it is to inspire the people with a sense of hope and to make them realise their own responsibility for their future. Further, it will not be enough, in my opinion, to provide in a single Act for the Constitution of the Provinces and the Centre, and then to keep the part dealing with the Centre in suspense for an indefinite or undefined period of time. It would be as unfortunate in the interests of the country, to take a course of this character, as it would be impossible

\* The italics are mine.



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for many of us to feel satisfied with, or agree to a constitution which might or might not materialise within a foreseeable distance of time. I would further urge that the time factor should not be lost sight of. During the last six years or more, as already stated, commissions, committees and conferences have followed one after the other, and while I recognise the value of caution and prudence in building up a constitution for a vast country like India, I would also emphasise the dangers of delay. In short, I suggest that the constitution should come into operation so far as the Provinces are concerned towards the end of 1934, and every attempt should be made to make the constitution at the Centre function a year later.

125. To make the inauguration of the Federation, therefore, depend upon the fulfilment of certain financial pre-requisites about which even the Government cannot speak with any degree of certainty, and on the preparedness on the part of a certain number of Princes to accede, about which one may, however, feel more sure, is to involve the constitution as to the Centre in great uncertainty. I would, therefore, reiterate that a certain time limit should be fixed and power taken to extend that time by a year or so in case of proved necessity. It should not be difficult for the Indian Princes to come into the Federation within a year or so after the passing of the Act, during which time the preliminary details as to the Instruments of Accession could be settled. But if it is found absolutely necessary to extend the time, power should be taken by statute to do so by proclamation.

Paragraph 32 of the Introduction says:—

"If a situation should arise in which all other requirements for the inauguration of the Federation having been satisfied, it had so far proved impossible successfully to start the Reserve Bank, or if financial, economic or political conditions were such as to render it impracticable to start the new Federal and Provincial Governments on a stable basis, it would inevitably be necessary to reconsider the position and determine in the light of the then circumstances what course should be pursued. If unfortunately, such reconsideration became necessary, His Majesty's Government are pledged to call into conference representatives of Indian opinion."

126. I submit that by the time the Bill is introduced into Parliament the position should become still more clear to the Government as to whether it is possible for them to set up the Federation within a year or so of the passing of the Act. If the Government should feel that it is impossible to do so, they should lose no time in taking Indian opinion into their confidence and taking such steps as might seem to them to be necessary to establish responsible government at the Centre. Indeed, I am not sure whether Government should not have now taken Indian opinion into confidence regarding these contingencies. It is necessary to be clear on this point, and I feel it my duty to say that, if, at that stage, Central Responsibility is ruled out for British India, and only a responsive form of Government is established, it will be difficult to satisfy Indian opinion and enlist co-operation on a large scale.

127. Lastly, as regards the extracts I have quoted in the preceding paragraphs from the speeches of Lord Irwin and Lord Chelmsford and the Prime Minister, they all justify me in holding that there are definite pledges on which India can take her stand. But perhaps what is most valuable is the Royal Message to India at the time of the opening of the

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existing Legislature. In the message of the King Emperor, which was delivered in 1921, we have the most direct and clear assurance given to us as follows:—

“For years, it may be for generations, patriotic and loyal Indians have dreamt of Swaraj for their Motherland. To-day you have the beginnings of Swaraj within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy.”

128. To argue at this distance of time that Parliament is bound by the preamble of the Government of India Act only, and that it makes no reference to Dominion Status, that the declaration made by Viceroy and Prime Ministers of His Majesty's Government are not binding on Parliament and that those pledges were conditional pledges and could not be given effect to unless those conditions were fulfilled in the minutest detail, will be to give a rude shock to the faith of those Indians who have honestly believed in the realisation of India's destiny as a self-governing dominion within the British Commonwealth of Nations, not in a remote and uncertain future, but in the near future. These pledges should be interpreted in a generous spirit and carried out without any unnecessary delay. Further, upon the fulfilment of those pledges, I submit, will depend the justification of those constitutional methods of co-operation, without which the three Round Table Conferences would have been impossible.

129. The constitutional position, therefore, of India should be definitely defined, so that there may be no further differences of opinion as to what her destiny is going to be. In other words, it seems to me to be vitally necessary that the constitution itself should provide for India's equality of status with the other Dominions, as soon as she is able to set up under an Act of Parliament complete responsible government.

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## APPENDIX A.

MEMORANDUM ON THE SPECIAL POWERS OF THE GOVERNOR  
BY SIR TEJ BAHADUR SAPRU.

1. The proposals in the White Paper which deal with the special responsibilities or powers of the Governor are as follows:—

Nos. 70, 71 at pages 55-56.

Nos. 92-94 at pages 61-62.

Nos. 103, 104 at pages 64-65.

No. 105 at page 65.

For the sake of convenience, the items in proposal No. 70 may be examined in the reverse order.

2. Clause (g) deals with the special responsibility of the Governor in respect of securing the execution of orders lawfully issued by the Governor-General. The orders of the Governor-General contemplated in this clause were explained by Sir Samuel Hoare to mean those orders which the Governor-General will have to issue in the discharge of his special responsibilities. If certain special responsibilities are placed on the Governor-General, it is obvious that there must be some machinery available for the carrying out of orders which he may pass in the discharge of these responsibilities. For the carrying out of such orders the Governor is obviously the best instrument or agent. Clause (g), therefore, is obviously a provision of a consequential nature, and cannot be taken exception to in the circumstances.

3. Clause (f) deals with the Governor's special responsibilities in respect of administration of areas declared in accordance with provisions in that behalf to be partially excluded areas. This must be read with the substantive proposal No. 106 at page 66, which provides that His Majesty will be empowered to direct by Order in Council that any area within a province is to be an excluded area and by subsequent Orders in Council to remove or vary any such order. Under proposal No. 107 in respect of partially excluded areas the Governor will be declared to have a special responsibility. The Governor will himself direct and control the administration of any area in a province declared, for the time being, to be an excluded area. Proposals 108, 109, at page 66 relate to legislation for the excluded areas. Coming back to proposal No. 70, it is a question of policy, on which difference of opinion is permissible, as to whether there should be any excluded areas. If, however, there are to be excluded areas, it is clear that somebody must be responsible for their administration, and the Governor is obviously the person on whom this responsibility can be placed. What is, however, necessary is that the excluded areas with their limits and extent must be ascertained, and the Indian Delegation should be given a chance of discussing this question in its entirety.

4. Clause (e) relates to the special responsibility of the Governor in respect of "the protection of the rights of an Indian state." It is obvious that this clause cannot relate to those rights of the Indian States, infringement of which can be actionable before the Federal Court, at the instance of the Federal unit concerned. It apparently relates to the infringement of certain rights which the Indian States possess under their treaties, or by virtue of their relationship with the Crown. Take for instance the case of a British-Indian district in the neighbourhood of an Indian State, where a movement has been started for the overthrow of the government in that state, or the ruling dynasty of that state. In a matter of this character the Indian state cannot get any relief from the Federal Court. It can only approach the representative of the Crown to protect it against an

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attempted revolution or a subversive movement. This, of course, will not apply to an agitation which may partake of the character of the criticism of the administration of the state. If this view of the matter and if this interpretation of Clause (e) are correct, this clause cannot be taken exception to.

5. Clause (d) relates to the special responsibility of the Governor in respect of commercial discrimination. In order to appreciate the full significance of it reference should be made to proposal 122 on page 70. The Nehru Committee Report also had a clause providing against legislation of a discriminatory character. This Report was drawn up in 1928 by a committee of an All-Parties Conference to which the Congress was also a party. Its chairman was the late Pundit Motilal Nehru. The point is not that it should be open to the legislature of the future to pass legislation of a discriminatory character, but whether relief from legislation of that character should be sought in the Federal Court or at the hands of the Governor. In the interests of the Europeans themselves, it is far more desirable that they should seek their remedy in such a case, openly and directly, in the Federal Court, rather than approach the Governor of the province and ask for his executive and administrative intervention. The decision given by an independent tribunal will naturally have greater weight than the administrative decision of a Governor. By approaching a Governor for his intervention, the European commercial community will expose themselves and also the Governor to severe criticism, and may bring themselves and the Governor into conflict with public opinion. Such action may also, it is feared, tend to weaken the authority and responsibility of the Ministers, and may easily be a fruitful source of misunderstanding between the Ministers and the Governor. If any legislation is passed by any legislature which contravenes the constitutional guarantees given to the Europeans, the Federal Court is apparently the proper tribunal before which its validity can be tested. And if any interim wrong or injury arises or is threatened no doubt the Federal Court will possess the power of issuing temporary injunctions. Coming to proposals 122, 123, referred to above, it will be seen that proposal 122 gives protection to any British subject coming into India from any part of the British Empire for the purposes of trade or business. For instance a British subject coming into India from South Africa or Kenya can claim the protection formulated in proposal 122, while a British-Indian subject going to, or living in South Africa or Kenya cannot as a matter of right claim equal treatment in those parts of the Empire. The whole basis of the settlement arrived at, at the Round Table Conference, was reciprocity between the United Kingdom and India, that is to say, if the laws of England do not discriminate against any Indian subject of His Majesty in respect of his carrying on of trade or business, or holding property in England, the laws of India too should not discriminate against any person belonging to the United Kingdom exercising similar rights in India. Proposal 122 therefore goes beyond the agreement. Probably it is an oversight, but in any case Indian opinion will not agree to the clause as it is drafted. If clause 122 affords protection to every British subject, then the provisions for the benefit of British subjects domiciled in the United Kingdom such as are contained in proposal 123, seem to be wholly unnecessary. Lastly the provisions as to commercial discrimination should not prevent Indian legislatures and Governments from fostering, encouraging, and subsidising indigenous industries, particularly those which may partake of the character of key industries.



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6. Clause (c) deals with the special responsibilities of the Governor in respect of the securing to the members of the Public Services, of any rights provided for them by the Constitution, and the safeguarding of their legitimate interests. So far as the Public Services are concerned, it is only fair that they should receive the most absolute protection in respect of their salaries, allowances, emoluments, and pensions, and all other rights which may be guaranteed to them by the Constitution. But the character and extent of those rights must be carefully defined. Proposals 182-201 deal with various matters relating to the Public Services at pages 82-86.

Appendix 7 (Part 1) pages 120-122, gives a list of the principal existing rights of officers appointed by the Secretary of State in Council.

Appendix 7 (Part 2) page 121, gives a list of the principal existing rights of officers appointed by an authority other than the Secretary of State in Council.

Appendix 7 (Part 3) page 122, deals with the question of the non-votable salaries of certain classes of Public Servants. These various provisions must be carefully examined. There are some rights of the Public Services, detailed in these Appendices to which no exception can be taken, there are others, however, which are open to objection. The point is that such rights as are guaranteed to the Services by the Constitution should be protected, and if that is accepted then the protective authority must be the Governor. In this connection it should be necessary also to discuss the functions of the Public Services Commission, and its relation to the Governor. The words in Clause (c) namely "*vis-a-vis*" the safeguarding of their "legitimate interests" are, however, wide and indefinite. If the phrase "legitimate interests" means the same thing as rights provided for by the Constitution, then it is redundant and may create trouble. If, however, that expression means something more than the rights provided for by the Constitution then the Delegation should be told what exactly it means. To place such large and vague powers in the hands of the Governor, is apt to give rise to a great deal of conflict between the legislature and the cabinet of the future on the one side, and the Governor on the other. Instead of strengthening the position of the Public Services, and placing their relations with public opinion on a satisfactory footing, provision of this character would weaken their position *vis-a-vis* public opinion. It must be borne in mind that if the Public Services in England do not come in for public criticism, it is because public opinion holds the Government responsible for anything that goes wrong, or is supposed to go wrong. On the other hand in India the Public Services, and particularly the Indian Civil Service; have hitherto performed the dual functions of administrators, and politicians. When, however, the Public Services will come to occupy the position of mere administrators or agents of the will of the Government of the day, public criticism will, as in England, be directed against the government.

7. Clause (b) deals with the special responsibilities of the Governor in respect of the safeguarding of the legitimate interests of the minorities. Here, again, the expression "legitimate interests" is open to the same objections as those in Clause (c). It may be admitted readily that the minorities are entitled to the protection of certain rights and privileges which must be carefully defined in the Constitution. It should be open to the minorities concerned to seek proper relief in the Federal Court, if any legislation is passed by the legislature in violation of constitutional guarantees. Where, however, anything is done administratively which causes any injury or loss to any minority, and where proper relief cannot be had in a court of law, the Governor may be appealed to for his intervention. Clause (b) as it stands may, however, give rise to

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conflicts between various sections of the community, if appeals are made to the Governor against some act of the Ministry of the day which may appear to the minority as being unjust to the minority, or opposed to what it considers to be its "legitimate interests." It will thus weaken the authority of the Ministry, and may seriously interfere with its constitutional responsibility to the legislature. This clause requires to be carefully redrafted, so that the circumstances in which the Governor may be called upon to exercise his special responsibility, in the interests of a minority, and the purpose for which his intervention may be invoked may be closely defined.

8. Clause (a) deals with the special responsibility of the Governor in respect of the prevention of any grave menace to the peace or tranquillity of the province, or any part thereof. If it is intended that in the ordinary day-to-day administration of law and order the Governor should not interfere with the discharge of their responsibility by the Government of the day, then this clause must be revised. The administration of law and order is so closely connected with the administration of other departments, such as Land Revenue, Excise, Forest, Public Charities, Religious Endowments, that it is easily conceivable that any action, legislative or administrative, taken by the Government of the day in any one of these departments may create grave public excitement. Certain sections of the community may then raise an agitation which may appear to the Governor as likely to interfere with the peace or tranquillity of the province, and the Governor may, purporting to act under this clause, completely stop such action. For instance, it is by no means unlikely that in several of the provinces, questions relating to the relations of landlords and tenants, or the administration of Public Charities and Religious Endowments may form the subject of legislation. It is conceivable that in one province the landlords, and in another the tenants or peasants may start an agitation attacking the policy of the Government. Similarly, if an attempt is made by the Government to bring under control or regulate the administration of Religious Endowments, the orthodox section of the community may adopt the same attitude. What is to happen in such a case? A nervous Governor, or a Governor who is not in sympathy with the policy of his Government, may easily stop all such legislation under this clause. It is true that this clause can be brought into operation only where there is *grave menace* and this clause is apparently intended to provide an intermediate stage of action of a preventive character on the part of the Governor, before the final stage of breakdown contemplated by proposal 105, page 65, is reached. The real object of this clause, however, seems to be to enable the Governor to take action when any grave menace to the peace or tranquillity of the province arises, due to the dangerous activities of a person or persons. It may be that either the minister will not have the necessary courage to deal with a situation of that character, or he may feel that he will not have the necessary support from the legislature. In such a case the Governor may, in the interests of the province, interfere, so as to prevent a grave menace to the peace or tranquillity of the province. It is, therefore, suggested that this clause should be so modified as not to interfere with the responsibility of the ministers in the other spheres of government, and its operation should be limited to the preservation of the peace or tranquillity as against a grave menace. It is, therefore, suggested that some such words as the following should be added to this clause:—

"Arising out of the activities of a person or persons tending to crimes of violence."

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9. The next important power of the Governor enabling him to discharge his special responsibility is that which is contained in proposal 92-93-94. In this connection reference may be made to paragraphs 36, 37, 38 of the Introduction.

It will be noticed that under the present constitution a Governor of a province does not possess such powers as are contemplated by proposal No. 92. According to the White Paper scheme, briefly put, he is to be vested with two special powers namely—1. the power of enacting, according to a certain procedure, a Governor's Act, and 2. the power of making ordinances under proposals 103, 104. The procedure as regards the former according to proposal 92, is, that the Governor may present or cause to be presented a Bill in the legislature with a Message that it is essential, having regard to any of his special responsibilities, that any Bill so presented should become law, before a day specified in the Message, and (b) to declare by Message in respect of any Bill already introduced in the legislature that it should become law before a stated date in the form specified in the Message. In the event of the legislature failing to act according to the Message, the Governor can enact the Bill as a Governor's Act. It is submitted that this procedure, though not identical with, is akin to, the procedure of certifying legislation under the existing Government of India Act (*see* section 67B of the Government of India Act), a procedure to which strong exception has always been taken in India.

10. The procedure contemplated by proposal 92 is objectionable in so far as (a) it is likely to tend to weaken party organisation in the legislature by affecting the adherence of the rank and file to their leaders; (b) it will blur the responsibility of the Ministers to the legislature and introduce an element of disruption into the legislatures. The Governor or the Governor-General who resorts to this procedure must not take shelter behind the support of such members of the legislature as dissenting from their leaders or the general body of members may decide to support such a Bill. Most of the special responsibilities contemplated by proposal 70 are responsibilities of an administrative character. It is possible that a Governor may contemplate special legislation in the interests of peace and tranquillity of the province, but that can only be in rare instances. There does not however seem to be any valid reason to assume that if there is grave menace to the peace and tranquillity of the province the Ministers will withhold their co-operation from the Governor. There does not, therefore, seem to be any necessity for giving this special power of legislation to the Governor. But, if the Governor must needs have that power, it is far better that he should exercise that power on his own account than that the Bill should *seem* to have received the support of the legislature. In short, the two spheres of responsibility must be kept distinctly apart. Proposal 94 seems to be of a still more far-reaching character, as under this provision the Governor can arrest the progress of any Bill which in his opinion affects the discharge of his special responsibility for the prevention of any grave menace to the peace and tranquillity of the province. The Governor has and must have the power of veto in any case. It is therefore submitted that the power of stopping legislation of a Bill under proposal 94, should be done away with.

11. Under proposal 103, the Governor can issue an Ordinance, if he is satisfied that the requirements of any of his special responsibilities with which he is charged under the Constitution call for the exercise of this exceptional power. If the language of this proposal is compared with Section 72 of the present Government of India Act it will be found that while the Governor-General may *in case of emergency* make and promulgate ordinances for the peace and good government of India, or any part thereof, the Governor may under the proposal under consideration pass an Ordinance, not merely for the peace and

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good government of the province, but for implementing any one of the special responsibilities mentioned in proposal 70. It will be noticed that proposal 53 of the White Paper gives the same powers to the Governor-General. In these days of easy communication, there is no reason why the Governor should possess this power when such power is also vested in the Governor-General. It is far better that the Governor-General should exercise this power from his place of detachment than that the Governor who will be nearer to the scene of local excitement and local prejudices, should be armed with the power.

12. Under proposal 104, an additional power is vested in the Governor to issue an Ordinance if his Ministers are satisfied, at any time when the legislature is not in session that an emergency exists rendering such a course necessary. If all that is meant by this proposal is, that under certain special circumstances, Orders in Council may be issued by the Governor upon the advice of his Ministers, then such a provision should be made in explicit terms, but there does not seem to be any strong and valid reason for multiplying the power of issuing Ordinances at the instance of Ministers. Such a power is, it is to be feared, likely to affect the relations of the Ministers to the legislature, and may at times enable them to avoid their responsibility to the legislature by taking shelter behind the Ordinance promulgated by the Governor.

## APPENDIX B.

### A MEMORANDUM ON COMMERCIAL DISCRIMINATION BY MR. M. R. JAYAKAR.

1. I base my comments on the provisions of the White Paper, being Clauses 18E and 122 to 124 of the proposals, and paragraph 29 of the Introduction. I also refer in this note to the previous proceedings of the Round Table Conference, especially the fourth report of the Federal Structure Committee (hereinafter referred to as the "Fourth Report, see second Round Table Conference Reports, p. 54), and the proceedings of that body and of the Minorities Committee at the second session of the Round Table Conference. There are also a few references to a report of the Committee on Commercial Safeguards, which was presented to the third Round Table Conference (see p. 39 of Indian Round Table Conference, third session—November-December, 1932).

2. Clause 122 of the Proposals lays down that a Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject, including Companies, etc., constituted in India, to any disability or discrimination, etc., etc. As drafted, this Clause would mean that no British subject, whether belonging to India or the United Kingdom or any of the Colonies or Dominions (now or in the future), and no Company formed by such British subjects, provided it is constituted in India, can be subjected to any discrimination.

3. It would be open under this clause for a South African, or a New Zealander, or for Companies formed by South Africans or New Zealanders, provided they are constituted in India, to claim complete equality for all time with indigenous concerns. It is not quite clear, but it seems to me that under this clause it would even be open to foreigners to be incorporated into a Company in India and claim exemption from discrimination unless the definition of "British Subject" is to be so framed as to include Companies formed by British subjects only. The clause, as drafted, is thus altogether too wide and goes far beyond the conclusions arrived at at the Round Table discussions. It will be noted that there is no reference to



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reciprocity in this clause, and therefore, as it stands, any subject of a Colony or a Dominion, for himself as also for any Company he may constitute in India, will be able to claim equality, even if such equality is not granted to Indians in his own country. It will be clear from all the previous discussions on this subject at the Round Table Conferences that it was never the intention to grant equality to any others than the residents of the United Kingdom. The issue was specifically raised by me in the Federal Structure Committee (see, e.g., last paragraph at page 1062 of the proceedings of the Federal Structure Committee and Minorities Committee, second Round Table Conference, Vol. 2). Reference is also invited to paragraph 34 of the Fourth Report which clearly lays down "it will be for the future Indian Legislature to decide when and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or Companies registered there, subject of course to similar rights being accorded to residents in India and to Indian Companies."

4. The future Indian Government should be left a free hand to discuss and adjust these questions on a footing of equality and reciprocity with the Dominions and Colonies of the British Empire as well as with foreign countries. This principle was accepted unanimously by the Committee on Commercial Safeguards in their report presented to the third Round Table Conference. In the last part of paragraph 3 of the said report it is stated: "The Committee assume that it would be open to the Governments of India should they wish to do so to negotiate agreements for the purpose mentioned in this paragraph with other parts of the British Empire." The future Indian Government may, for instance, decide that the grant of any such privileges to South Africans might be conditional on their granting not only equality of trading, but also equality of political status to Indians in South Africa. That the object was to confine these privileges to the residents of the United Kingdom is also clear from the concluding sentence of paragraph 25 of the Fourth Report which says: "on the other hand the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms not less favourable than those on which persons and bodies in India enter and trade with the United Kingdom."

It will be seen from clause 24 of the Fourth Report that, in accordance with the discussions that had previously taken place, a distinction has been made between persons and bodies in the United Kingdom trading with India but neither resident nor possessing establishments there and persons and bodies trading with India and resident or possessing establishments there. It will be clear from this, as well as from the trend of the previous discussion that it was admitted that a distinction should be made between the existing rights of British individuals and Companies now trading in India, and resident or possessing establishments there, and British individuals and Companies who did not possess such establishments or who are not at present trading with India. The said clause 24 states that: "such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing." By this is obviously meant persons and bodies now trading with India and resident or possessing establishments there. The same distinction was recognised in paragraph 4 of the Report of the Committee on Commercial Safeguards presented to the third Round Table Conference. This distinction is of vital importance and must not be lost sight of, as the safeguarding of the future industrial development of India will, to a large extent, rest upon the maintenance of

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this distinction. Just as the Clauses preceding Clause 24 of the Fourth Report dealt with existing persons and bodies trading with India, so Clause 122 of the Proposals of the White Paper is meant to deal with such persons and bodies only.

6. The view which the Committee took as stated above, is the prevalent view in India, even amongst British merchants. This was made clear in the course of the examination of Sir Edward Benthall and other representatives of European commerce, who gave evidence before the Joint Select Committee. I shall quote a short extract from Sir Edward Benthall's evidence consisting of my questions and his replies on this point.

*Mr. Jayakar:* Sir Edward, your Association speaks on behalf of British subjects domiciled in the United Kingdom and trading with India?

*Sir Edward:* Yes.

*Mr. Jayakar:* You do not represent British subjects who are not domiciled in the United Kingdom?

*Sir Edward:* No; we are speaking for the first class.

*Mr. Jayakar:* And they accept the principle of reciprocity?

*Sir Edward:* Yes.

*Mr. Jayakar:* What will be your Association's view? Do you suggest that British subjects belonging to other parts of the British Empire should enjoy in India rights which their own country does not give to Indians?

*Sir Edward:* I think I made it clear in an answer to a previous question that we were only representing British subjects domiciled in the United Kingdom, and while we hoped that British subjects domiciled in the Dominions would be treated in the same way as British subjects domiciled in the United Kingdom, that was a matter of arrangement between the Government of India and the Government of the Dominions.

*Mr. Jayakar:* You do not advocate that they should enjoy in India rights which their own country does not give to Indians?

*Sir Edward:* That is a matter of negotiation, I think.

*Mr. Jayakar:* What is your own view? You are an important man in British India. Do you suggest that they should enjoy in British India rights which their country does not give to British Indians?

*Sir Edward:* No.

7. The principal objection that has been raised from the Indian point of view to the proposals regarding commercial discrimination is that they do not provide adequate means of safeguarding the development of Indian industries, particularly with regard to the basic, national, key and infant industries.

8. So far as industries already established by Britishers in India are concerned, I recognise that it would be futile to resist the grant of complete equality to them. The question, however, stands on a totally different footing with regard to industries that may be established in the future. With regard to them, there is no reason why the principles recognised as aforesaid in paragraph 24 of the Fourth Report and paragraph 4 of the Report of the Committee on Commercial Safeguards at the third Round Table Conference should not be embodied in the Constitution Act. I can find no adequate reason why the Indian Legislature should be debarred from providing reasonable conditions regarding incorporation, capital, control and similar other requirements which would ensure that Companies to be formed under British initiative or control should promote the development of Indian trade and industry and not hamper or restrict it in any way. The conditions to be imposed would be similar to those recommended by the External Capital Committee and would be applied only in the case of basic or national industries, key industries and infant industries. The principle of applying such conditions when subsidies or

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bounties are granted was accepted in paragraph 4 of the Report of the Committee on Commercial Safeguards at the third Round Table Conference and has already been accepted by the Government of India. I may mention, however, that the grant of direct subsidies or bounties is fast coming to be regarded as an inadequate and economically objectionable method of helping industries and is utilised in rare cases only. There is no reason why similar conditions should not be imposed in all cases where assistance is granted by the State, whether in the shape of a financial aid or otherwise, in order to safeguard and promote industries of the nature described above.

9. The definition of "infant" industries should not present any difficulty.

By "key industries" I mean industries dealing with certain materials or processes which are regarded as vital for the defence or well-being of the country. Instances of such industries as mentioned in the "British Key Industries Protection Act" are: optical glass, magnets, valves, etc.

The term "basic or national industry" is more difficult to define exactly. By basic or national industries I mean industries which are necessary for the defence of a country in time of war, or on which its industrial prosperity in peace is based.

10. It is not unlikely that an attempt will be made to set aside the whole of this proposal on the ground of the impossibility of defining basic or national industries. In that case, I would invite attention to paragraph 22 of the Fourth Report in which a reference is made to the difficulty of drafting a clause prohibiting legislative or administrative discrimination. It is stated there: "a completely satisfactory clause would no doubt be difficult to frame and the Committee have not attempted the task itself. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula." Similarly I would make no attempt in the time at my disposal, to frame a satisfactory definition but would content myself by saying that it should not be beyond the competence of an experienced Parliamentary draftsman. If, however, the difficulty of formulating a general definition was found to be insuperable, a schedule might be attached enumerating the various industries to be treated as basic or national. Such a schedule might contain the following:—

Ammunition and materials of war;

Railways;

Exploitation of minerals, water and electrical power;

Manufacture of iron and steel;

All industries which are State monopolies or over which Government exercise any form of direct control.

This list is illustrative.

11. In connection with the right of a country to safeguard its indigenous industries, I would invite the attention of the Committee to a Memorandum by Dr. Narendra Nath Law printed in the proceedings of the Federal Structure Committee and Minorities Committee, second Round Table Conference Vol. 3, pages 1483 and following.

12. A difficulty will immediately arise regarding the definition of existing industries. It would not be difficult to get over any conditions sought to be imposed by forming what would be essentially a new Company while retaining the name of an existing Company. Here, again, I do not attempt to formulate a definition which would leave no loopholes but would suggest that a substantial modification of the scope and nature of a business might be held to constitute a new undertaking.

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13. I now proceed to state how Clause 122 might be modified so as correctly to implement the decision arrived at the Round Table Conference.

I should word it somewhat as follows:—

“The Federal Legislature and the Provincial Legislatures will have no power to make Laws subjecting in British India any British subject domiciled in India or in the United Kingdom at the time of the passing of the Act, including Companies, partnerships or Associations constituted in India and existing at the time of the passing of the Act, and Companies constituted in the United Kingdom and trading with India at the time of the passing of the Act, in respect of taxation, the holding of property of any kind, the carrying on of any profession, trade, business or occupation, or the employment of any servants or agents, or in respect of residence or travel within the boundaries of the Federation, to any disability or discrimination based upon religion, descent, caste, colour, or place of birth, etc.”

(The italicised words are new.)

14. A further difficulty has been caused by the fact that, the question of the rights of all Indians to hold property, trade, travel, etc., in which no discrimination is intended to be made now or hereafter is mixed up in the said clause with the question of the equality of the existing rights of British traders. This has caused confusion. It would be better to deal with this subject separately by means of a separate clause in the Constitution Act which would guarantee such equality to all British Indian subjects for all time.

15. It is further to be noted that, as stated above, nothing has been mentioned about reciprocity in Clause 122. So far as this clause merely guarantees non-discrimination to the existing British business interests, I do not think that reciprocity matters very much. But perhaps it would be better to refer to it in this clause, so that, in the very unlikely contingency of the British Government imposing restrictions upon Indian trade or industry in the United Kingdom which do not exist at present, it will be open to the Indian Government to impose similar restrictions upon British Companies in India. It is only when clause 122 is re-drafted so as to be made applicable to existing British interests that clause 123 assumes its real significance. It might be pointed out that if clause 122 remains as it is in the White Paper and clause 123 also remains unaltered, then clause 123 does not carry out the intentions of the Round Table Conference, because in paragraph 24 of the Fourth Report, it is distinctly stated that “the Committee were generally of opinion that *subject to certain reservations*, they (i.e., persons and bodies in the United Kingdom trading with India but neither resident nor possessing establishments there) ought to be freely accorded upon a basis of reciprocity the right to enter and trade with India.” (The italics are mine).

16. In Clause 123 there are no reservations of any kind which would be applicable to Companies not now trading with India or possessing establishments there. I have already mentioned the kind of reservations which I would apply to such Companies in the interests of the future development of Indian industry. If Clause 122 is modified as suggested above, Clause 123 may perhaps remain as drafted in the White Paper, in view of the modifications I propose in Clause 124. I would modify Clause 124 on the following lines:—

“An Act of the Federal or of a Provincial Legislature which with a view to the encouragement of Indian trade or industry, lays down certain conditions regarding the incorporation of future Companies in India, their registration, the denomination of their capital, the



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*proportion of it to be offered to Indian subjects, the composition of the Board of Directors, or the facilities to be given for the training of the Indian subjects of His Majesty, will not be held to fall within the terms of the two preceding paragraphs," etc. (The words italicised are new).*

17. Before considering the new draft, I might examine the clause as drafted in the White Paper. In this connection attention is invited to the discussion in the Federal Structure Committee on this question and the remark of Sir Purshotamdas Thakurdas in the middle of page 1244 (Indian Round Table Conference, Second Session, proceedings of Federal Structure Committee and Minorities Committee Vol. 2), stating that the reference to the recommendations of the External Capital Committee was illustrative and not exclusive. Particular reference is also invited to the discussion on this question, especially the remarks of Lord Reading on pages 1246 and 1247, where the noble Lord accepted my suggestion that the conditions should be such as might be prescribed by the Indian Legislature. Nevertheless, Clause 124, as drafted now, treats the conditions as though they were exclusive and all-sufficient and incapable of being modified in any way by the future Indian Legislature. One of the conditions which was then suggested was that a certain proportion of the capital should be held by Indians. Some objections, into which I need not go at present, can be raised to this suggestion, but there can be no objection to the offering of a certain proportion of the capital for subscription in India at the time of the issue. I may here invite the attention of the Committee to the remarks of Sir Akbar Hydari on page 1243 describing the practice in Hyderabad. Sir Akbar said " . . . wherever we want to give any help from public funds we do lay down certain conditions, which are not based upon racial discrimination, but upon these facts—that a certain proportion of the directors shall be Hyderabadis and also a certain number of the shareholders. Having regard to the difficulties to which Lord Reading has referred, we say that a first refusal of a certain number of shares shall be given either to Hyderabadis or to the Hyderabad Government, but afterwards there are no further conditions."

If such a practice prevails in conservative Hyderabad, there ought to be no objection in adopting it in British India.

18. There is another respect also in which the conclusions of the Round Table Conference do not seem to have been fully embodied in this Clause. It is material here to refer to the remarks of Lord Reading in the last paragraph on page 1082 in which he admitted the right of the Government of India to lay down conditions in respect of future public utility undertakings or public concerns in which public money was to be invested or used. His Lordship said: "I quite follow the argument that where, for example, in future public utility undertakings or public concerns in which public money is to be invested or used, the Government of India may say, well, we think that a Company which is to get the benefit of the subsidy that we shall give or of the advantage that we shall give by some direct payment or use of money, must be a registered Company in India with rupee capital, with a moderate reasonable proportion of directors, and with a reasonable and moderate proportion of Indian shareholders . . ." There may be concerns of this kind in which public money is used but which nevertheless do not receive subsidies or bounties. The right of the Government of India to impose conditions in such cases does not appear to be provided for in clause 124.

19. Turning now to the clause as drafted by me, it will be seen that I have specifically defined the nature of the conditions which it would be within

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[Continued.]

the competence of the future Indian Legislature to impose, and not give it a general power to impose restrictions. I am prepared to concede, for meeting my opponent half way, that the grant of such a general power, in spite of the remarks of Lord Reading already quoted, may be open to grave difficulties and may be stoutly opposed unless it is hedged in by numerous qualifying clauses. I am even prepared to accept the principle that the conditions so imposed must be for the development of Indian trade and industry and not for the hampering of British trade and industry and that it may be open to the Federal Court to decide whether the conditions imposed are in fact meant for the promotion of Indian trade and industry, or for the hampering or obstruction of British trade and industry. May I add, that in making these concessions I have gone as far as it is possible for Indian opinion to go.

20. The Viceroy may also exercise his power of disallowance or submission of the Bill for the pleasure of His Majesty. If, even with these safeguards, a power to impose conditions is not granted, then Indian opinion may have to hold out for a clause such as the one proposed by me. If, even to that, an objection is raised that, in the absence of a definite proportion or percentage, the power may be so exercised as seriously to obstruct, if not destroy, British business, the answer would again lie in the power of appeal to the Federal Court and the authority of the Viceroy to interfere in the exercise of his special responsibility for the prevention of commercial discrimination. If there is still no agreement, we may agree to define the conditions more closely. In that case they might be:—

(1) The right to provide that the Company shall be incorporated in India on a rupee capital.

(2) That at least half the Directorate shall be Indian.

(3) That at least 55 per cent. of the capital shall in the first instance, be offered for subscription in India.

(4) Adequate measures for the training of Indians in the industrial concerns.

21. What to my mind is most important is that India should have the right to impose these conditions in the case of all future Companies who may desire to establish themselves in India in connection with the basic, national, key, or infant industries mentioned above. I do not think that it can be said that we would be raising a very important issue at the eleventh hour, because according to my reading of the proceedings of the Round Table Conference the right to make a distinction between existing and future British Companies has, as stated above, always been admitted. If such a thing is not done, to take the instance of the Iron and Steel Industry of the Tatas, it will be possible for a powerful and long-established firm like Messrs. Dorman Long's, to establish themselves in India and compete with them. Even though 100 per cent. of their capital and 100 per cent. of the Directorate may be British, and they may not agree to train a single Indian in the more responsible posts in the Iron and Steel Industry, they will be entitled to the benefit of all the protective duties. It is only when any question of direct financial assistance in the shape of a subsidy or bounty arises that there is any likelihood of any distinction, but the possibility of a Company like the Tatas being given a subsidy or bounty in the future is very remote.

16<sup>th</sup> Novembris, 1933.]

MEMORANDUM

[Continued.]

BY SIR TEE BAHADUR SAPRU, K.C.S.I.

## ADMINISTRATIVE DISCRIMINATION.

22. The proposals regarding Administrative Discrimination as embodied in the White Paper are novel; they unduly fetter the discretion of the Ministers and will actually place Indian industry in a more unfavourable position than it is to-day. Paragraph 29 of the Introduction to the White Paper says: "The Governor-General or the Governor as the case may be, would be entitled to act otherwise than in accordance with his Minister's advice if he considered that such advice involved discriminatory action in the administrative sphere." Under clause 18 of the Proposals the Governor-General is declared to have a "special responsibility" in respect of (c) the prevention of commercial discrimination. The clause further says: "It will be for the Governor-General to determine in his discretion whether any of the 'special responsibility' here described are involved by any given circumstances." That seems to mean that the Governor-General, in the case of administrative discrimination at least, will be the final judge as to whether any act of his Ministers really involves such discrimination. Instances of such discrimination exercised in a reasonable and impartial manner exist even to-day, not only in India, but in all countries of the world.

23. To take an instance. The B.B. & C.I. Railway invited tenders both in England and India for sleepers some time ago. I understand that although one tender in London was slightly lower than an Indian tender, the Government of India in the exercise of its discretion had the contract awarded to the Indian Company as the producers of Iron and Steel in the country itself. There are many countries in the world to-day in which their respective Governments have issued specific instructions that for all Government works, works of public utility by municipal or other local bodies, materials produced in the country alone should be used with a view to the prevention of unemployment. The Indian Government is far more conservative in this respect than most other Governments. Tenders for public works are invited from all over the world and it is only in rare instances as when dumping prices are tendered, as is so often the case nowadays, and the difference is very small, that any preference is given to the home manufacturer. Under the provisions regarding administrative discrimination as laid down in the White Paper as strictly interpreted, it would be open to any British manufacturer whose tender may be £100 less than the tender of an Indian manufacturer, actually to go to the Federal Court on the ground of administrative discrimination even if the Governor-General or the Governor did not choose to interfere in the exercise of his "special responsibility." Such a provision is not only detrimental to the interests of industries run by Indians in India, but also the interests of industries run principally by British interests in India, such as the engineering and coal trades. No question of reciprocity enters into this. Reciprocity in any case, between a rich and an industrially powerful country like Great Britain and a poor and backward country like India is a bit of camouflage, but as applied to administrative discrimination it is nothing less than moonshine. Supposing there was an order for British rails which would mean employment to 10,000 British workmen, would any Railway Company or public body or Government in England dare to place the order in Germany or in Canada simply because the German or the Canadian tender was £100 less than the lowest British tender? Would they place the order with an Indian manufacturer if his tender was £100 less? The life of no British Government which systematically countenanced any such policy would be worth a month's purchase. It is perfectly right and reasonable

16<sup>o</sup> Novembris, 1933.]

MEMORANDUM

[Continued.]

BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

that such should be the case. At a time when the spending of money for public works in order to relieve unemployment is powerfully advocated, it would certainly be wrong for a British Government or a Railway Company to give a contract outside Great Britain, merely because they saved a few pounds and thereby deprived a number of British workmen from getting their livelihood. The same thing would be done by Canada or France or Germany or Belgium, and there is no reason why it should not be done by India.

24. As stated above, it is being done now by the Government of India, although in a very timid, cautious and conservative manner, but the new Constitution outlined in the White Paper would deprive the future Indian Government of all power to do so. There is no reciprocity in this case and the existing proposals should be abandoned as far too rigid and unfair. At the same time it is not unreasonable that British interests should seek to safeguard themselves against *systematic* discrimination in the administrative sphere by the future Indian Executive which might lead to serious harm to their business. For that purpose, I would only leave a general discretionary power to the Governors and the Governor-General to interfere and overrule their Ministers if they thought that the administrative discrimination made by the latter was so markedly malicious, persistent and unfair as to amount to the penalising of British business *vis-a-vis* Indian business. Special provision for that purpose might be made in the Instrument of Instructions. The Governor-General or the Governor would not lightly exercise this power of interference as it would lead to the resignation of the Minister and a public outcry, unless it was fully justified; but this is essentially a matter where practical and political considerations enter. It is difficult to lay down the exact limit at which the Governor-General or the Governor would exercise his right of interference, or to define it in terms of hard and fast rules. I would not, therefore, give the power of adjudication on this issue to the Federal Court as that would immediately make the provision too rigid and deprive it of the elements of flexibility and discretion which are its essence.

25. There is another very important consideration. There should be very little administrative discrimination as between British Companies established in India now, or in the future, but there should be discrimination within reasonable limits, between Indian Companies or British Companies established in India and British Companies incorporated in the United Kingdom.

It is mainly a question of the measure of the discrimination and its reasonableness and must be left to the discretion of the Governor-General and the Governors. I would desire a modification of Clauses 122 to 124 of the Proposals, in the light of these comments.

26. I cannot conclude this note without referring to the formula which was accepted by the first Round Table Conference as a compromise between the rival views of British and Indian business men. That formula, which is to be found set out in detail at page 49 of the first Round Table Conference Reports (copy supplied to the Committee), spoke of an appropriate convention based on reciprocity to be entered into for the purpose of regulating the rights of the British commercial community in this behalf. I have not been able clearly to understand why such a convention is regarded as impossible in expert circles. That there are difficulties connected with the creation of such a convention may be easily conceded, but such difficulties are to be encountered in every branch of this subject. I do not regard these difficulties as incapable of being overcome by goodwill and understanding



16<sup>o</sup> Novembris, 1933.]

MEMORANDUM

[Continued.]

BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

on both sides. The advantages of such a convention are manifest, and were referred to in the course of the discussions at the first and second Round Table Conferences. Even now, I would urge upon the attention of His Majesty's Government some method by which these difficulties might be overcome and an appropriate convention established between the two countries, even after the new Constitution is offered to India. It was very encouraging to hear the views in this connection of no less a person than Sir Edward Benthall, the main representative of European Commerce, who gave evidence before the Committee. I shall quote a short extract from his evidence, being my questions and his replies on this point.

*Mr. Jayakar:* Do I understand that you do not think that an appropriate convention is possible?

*Sir Edward:* We have said in paragraph 22, of Part G of our memorandum, that we put forward the proposal for a convention ourselves, but it was not found practicable to accept the Chambers' proposal, and, if I remember aright, at the second Round Table Conference, it was you, Mr. Jayakar, who said that such a convention ought to be negotiated between the Government of India of the future and the Government of Great Britain.

*Mr. Jayakar:* That is so. Would you agree to such a convention being created at the right time?

*Sir Edward:* If it could be negotiated.

*Mr. Jayakar:* I am assuming that such a convention could be negotiated. Would your Association agree to such a convention?

*Sir Edward:* Certainly, provided it covered our rights.

*Mr. Jayakar:* I mean a convention which carried out the principle which is contained in the first part of the formula. This formula embodies in the first part the principle of it, and, in the second part, it suggests that the convention should carry out the principle which is embodied in the first part. Would you agree to such a convention?

*Sir Edward:* Yes; of course it has got considerably more complicated than that paragraph indicates, since that time.

*Mr. Jayakar:* I want to know whether you think a convention of this character cannot be worked out. That is not your view?

*Sir Edward:* We always felt it could, but practical difficulties were put in the way.

*Mr. Jayakar:* Supposing those practical difficulties could be got over, merely as a matter of principle your Association would accept a convention of that character?

*Sir Edward:* Yes, we like the idea.

16<sup>th</sup> Novembris, 1933.]MEMORANDUM  
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

[Continued.]

## APPENDIX C.

25th July, 1933.

From M. R. Jayakar, Esq.

MY DEAR SIR TEJ,

I have carefully gone through the Memorandum which you have prepared on the White Paper, stating the Indian point of view as you and I have conceived it.

I am in complete agreement with the views you have stated in your Memorandum, and I do hope that you will be able to persuade the Rt. Hon. Secretary of State and the British Parliamentary Committee to accept the suggestions you have made in your Memorandum. In that case, I have no doubt that the White Paper will be acceptable to a very large section of our countrymen, who will be able to work the new constitution and settle down to constructive work.

In response to your desire that I should add a Memorandum of my own on Commercial Discrimination, I am sending you a short note, with permission to incorporate it with your Memorandum when you send it to the Secretary of State and to the Chairman of the Parliamentary Committee. I authorise you to deal with my note in any way you like and even incorporate it, if you think it right, in your Memorandum when you publish it for the use of our countrymen, on your return to India.

Yours sincerely,

(Signed) M. R. JAYAKAR.

24th July, 1933.

From N. M. Joshi, Esq.

MY DEAR SIR TEJ,

I have read your Memorandum on the White Paper. I find myself in agreement with the general lines of the Memorandum and with most of your constitutional proposals. There are a few points, specially dealing with Labour and the democratisation of the Constitution, on which I shall write a separate note.

Yours sincerely,

(Signed) N. M. JOSHI.

22nd July, 1933.

NOTE from A. RANGASWAMI IYENGAR, Esq.

I desire to add this note to Sir Tej Sapru's Memorandum. I not only accept the case for India as stated by him in all essential outlines, but also in the actual proposals he has made.

I have, however, a number of important suggestions on questions connected with General and Railway Finance, Franchise, Special Responsibilities, and the like, on which I desire to submit supplementary memoranda to the Lord Chairman of the Joint Committee, for the consideration of the Joint Select Committee.

(Signed) A. RANGASWAMI IYENGAR.

## RECORD X—(contd.)

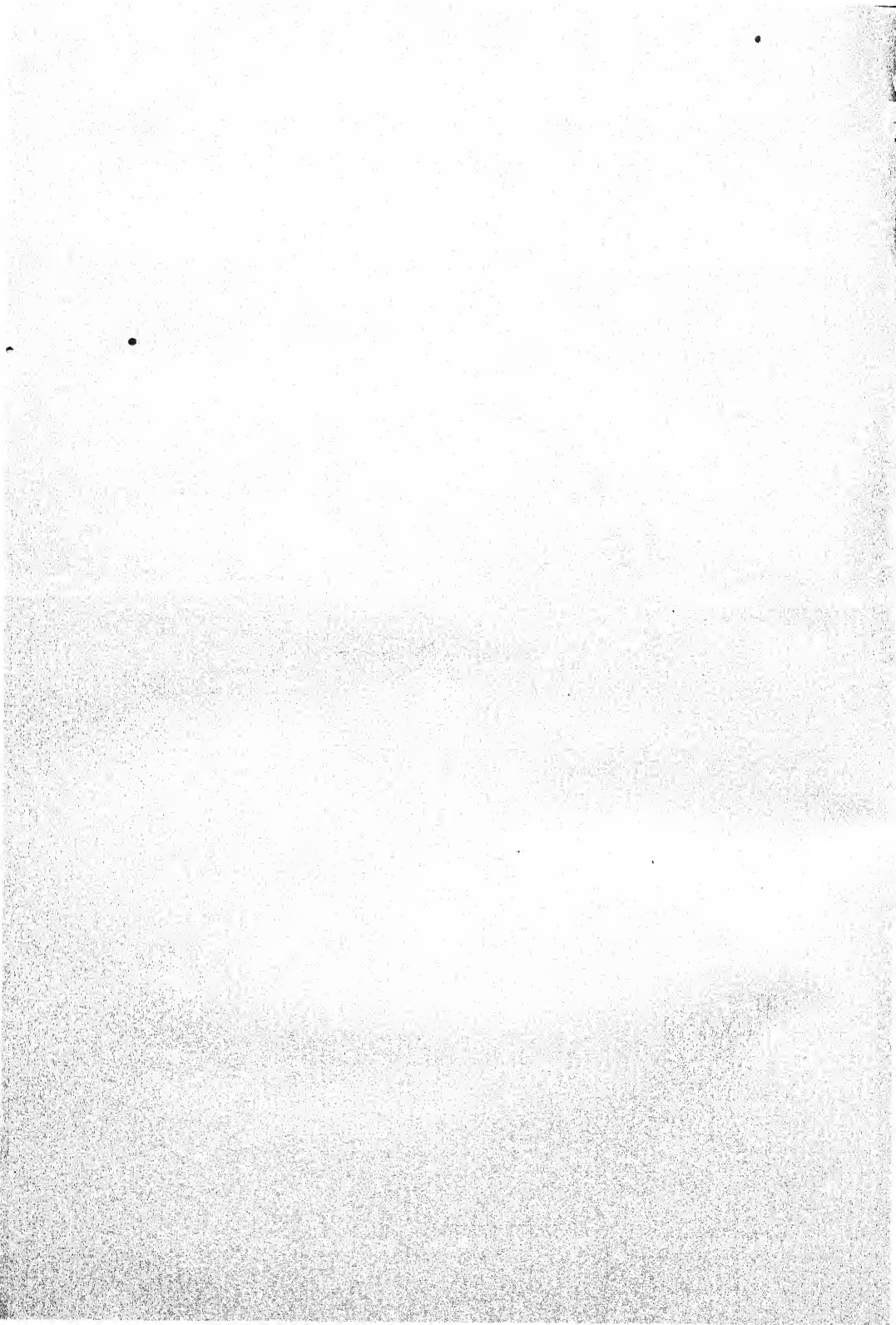
### 5. Memorandum by Mr. A. H. Ghuznavi on certain points affecting Bengal

While I fully endorse the conclusions of the memorandum submitted jointly by the British Indian Delegation to the Joint Committee on Indian Constitutional Reform, I would like to bring prominently to the notice of the Committee two points which are of special importance to the Province of Bengal which I represent.

In the first place I should like, on behalf of the Muslim Community of Bengal, to say a few words on the determined efforts that are being made in certain quarters both here and in India to have the Communal Award revised in respect of Bengal. I would state with the utmost emphasis that any such change would alter for the Muslims of Bengal the whole basis of the White Paper proposals, and the entirely new situation that would be created would give rise to serious difficulties since it re-opens the whole question of our support to the scheme of reforms. As is well-known, at a comparatively early stage of the discussions at the Round Table Conference, the Muslim Community declined to take part in the discussions relating to Central responsibility until and unless there was a satisfactory solution of the communal difficulty. The Muslim Community participated in the Third Round Table Conference on the understanding that the Communal Award would be maintained.

I should fail in my duty both to the Committee and to my Community if I did not stress the fact that very grave apprehensions have been aroused in our minds by rumours to the effect that the Committee may contemplate changes in the Award. After seven months, day by day contact with the Joint Select Committee I am confident that so well-informed a tribunal is conscious of the very serious evils which would attend any alteration in the terms of the Award. But I cannot conceal the fact that the Muslim Community in Bengal has been deeply disturbed by the information it has obtained of the strength and ubiquity of the attacks which are being made day by day on the Award. That this statement of the position will be given the weight which is its due is the earnest hope of many millions of His Majesty's Muslim subjects in Bengal, and indeed throughout British India.

The second point I wish to make on behalf of the whole of Bengal and not merely in the interests of my own Community is about the allocation of the export duty on jute. The White Paper proposal is that Bengal should receive half the proceeds of the export duty on jute. I need not here elaborate the arguments which I have urged on previous occasions that, in view of the economic situation in Bengal, the entire proceeds of the tax should be assigned to the Province on grounds of equity. While I have no objection to the retention by the Federal Government of a portion of the proceeds for a limited period, the allocation of revenues under the new Constitution should definitely recognise this as a Provincial tax, to be ultimately assigned completely to the Province concerned.





## RECORD X—(contd.)

### 6. Memorandum on Labour Representation, Franchise, etc., by Mr. N. M. Joshi

Without prejudice to my views on the adequate Labour Representation and the desirability and practicability of Adult Suffrage, I propose to make some suggestions for modifying the White Paper proposals as regards the representation of Labour and Franchise and a few other cognate matters which will make for some improvement.

#### LABOUR REPRESENTATION.

##### *Provincial Legislatures—Provincial Assemblies.*

Labour is inadequately represented in all Provincial Legislatures. But I shall content myself by suggesting that in C.P. which is an industrialised province, having Textile, cotton-ginning and pressing, Mining and Railways highly developed, Labour Representation should be increased from 2 to 4. In C.P. the aborigines and Hill tribes form one-fifth of the population and are given only one seat. I suggest this special representation should be substantially increased.

Seats allotted to Labour in Sindh and Orissa should be increased from one seat in each Province to two seats in each. In North Western Frontier Province no seat is allotted to Labour. I suggest that Labour should have a minimum of two seats in this Province. It may be said even these slight modifications may be considered as an alteration of the Communal award. If that view is taken I would suggest that Government should in these cases take the initiative in securing the consent of the Hindus and Mussalmans to these modifications, which in my view is not difficult, considering the slight nature of the changes proposed. It would not be fair to leave the initiative in this matter to illiterate working classes and aborigines.

##### *Provincial Upper Chambers.*

In the Provincial Upper Chambers where they are proposed to be established, no Labour representation is provided. The landlords, industrialists and merchants on account of their influence and wealth will easily secure representation without special reservation. In no province Labour Representation is sufficient to secure election of its representative without special reservation. The qualifications for candidates for election for these Upper Chambers ought to be so devised that Labour Candidates will not find it very difficult to possess them.

##### *Federal Upper Chamber.*

Remarks made above regarding Labour representation in the Provincial Upper Chambers apply equally to the Federal Upper Chamber. Seats reserved for Labour in the Upper Chamber should be filled by election through an electoral college consisting of members elected for Provincial Legislatures through special Labour Constituencies.

##### *Federal Assembly.*

No representation has been provided to the aborigines and Hill Tribes, either in the Federal Assembly or Federal Upper Chamber. Though in some cases this section of the population will be in what are called "backward Areas", they will be subject to most of the Federal Legislation on Federal subjects. A glance through the list of Federal Subjects will convince anyone of this fact. Moreover, even the Backward Areas cannot be free from Federal Taxation. There is, therefore, no justification for denying representation to this helpless section of the population. The same remarks apply to the representation of these people in the Provincial and Federal Upper Chambers.

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16<sup>o</sup> Novembris, 1933.] MEMORANDUM ON LABOUR  
REPRESENTATION BY MR. N. M. JOSHI.

[Continued.]

*Franchise.*

I suggest that a certain amount of wages paid in cash on monthly, fortnightly or weekly basis, should be regarded as a qualification for franchise. Any one who has earned during the previous year an income of Rs.100 and more by his wages paid monthly, fortnightly or weekly should be entitled to vote. If it is absolutely necessary this qualification may be first made applicable to cities and towns which have municipalities where the staff for registration of voters will easily be available. This qualification will not only benefit Labour but will be useful in increasing the number of women voters for which some difficulty has been felt.

In Bombay for the election of Provincial Assemblies tenants of agricultural land are not given franchise. This omission ought to be rectified. Under the present constitution they possess franchise and consequently are entitled to vote for elections for the Federal Assembly in the White Paper Constitution. It is therefore inconsistent that when tenants can vote for the elections for the Federal Assembly they cannot have a vote for elections for the Provincial Assemblies.

*Representation of States.*

As a matter cognate to the main subject of these notes, I suggest that, without doing any violence to the Sovereignty of the Rulers of Indian States, recognition of the principle that their representation in the Federal Legislature should be popular or representative of the people, should be secured. If this is done through the Treaties of Accession no violation of Sovereignty is involved, as these treaties will provide for voluntary surrender of some sovereignty on the part of the Rulers of Indian States for the purposes of the Federation.

*Rights of Property.*

The statement made in the Introduction of the White Paper, Para. 75, that some provision regarding "Rights of Property" should find a place in the Constitution Act is fraught with serious consequences. Any such provision is bound to lead to difficulties, even though the proposal may be well defined and restricted. The power of Governments to deal with proposals as regards taxation, protection of the rights of agricultural tenants and of tenants of residential buildings and as regards clearing of slums and dangerous buildings and improvement of unhealthy areas within the bounds of municipalities and outside them, will always be in danger of being challenged.

*Extension of Franchise in the future.*

The White Paper proposals make no provision for the extension of franchise in the future. There is no justification of principle for the restriction of franchise to a small section of the population. As the restriction is mainly based on the ground of the difficulty of polling arrangements steps must be taken for the removal of the difficulty and the Constitution ought to provide for the automatic extension of enfranchisement and fix a period within which the goal of adult suffrage will be reached. It is suggested that the extension of franchise should be left to Indian Legislatures. But it is wrong to expect Legislatures elected on the basis of a high franchise qualification to extend enfranchisement without a struggle on the part of the unenfranchised and therefore it is essential that the extension is ensured by the Constitution Act itself and the methods of extension may be left to the Indian Legislatures.

## RECORD X—(contd.)

### 6A. Memorandum by Mr. N. M. Joshi on the Position of Labour Legislation in regard to the proposals in the White Paper

The White Paper has very rightly put most kinds of Labour Legislation in List III which consists of subjects of concurrent jurisdiction. The need for Labour Legislation being uniform is recognised by all and therefore does not require to be dilated upon. However this kind of legislation not only needs uniformity, but it is necessary that the uniformity should be attained simultaneously. No one Province will be very willing to place any financial burden or any other kind of restrictions upon its industry, especially when it is competitive, unless such burden or restrictions are placed upon the industries of other Provinces. The lists given in the White Paper, though satisfactory as far as they go from the Labour point of view, require some modifications. "Health insurance and invalidity and old-age pensions" are put down in List II which consists of purely provincial jurisdiction. It is necessary that these subjects should also be placed in List III and be made subjects of concurrent jurisdiction. There is no justification for differentiating these subjects from the other subjects of Labour Legislation which are already placed in the list of concurrent jurisdiction. Schemes for health insurance and invalidity and old-age pensions may require contributions both from employers and employees, and in deed the financial burden of such schemes upon the industries may even be greater than the burden of legislation like the Workmen's Compensation Act which is already put in the List of Concurrent Jurisdiction. The experience of other Federations clearly proves the difficulty of establishing satisfactory schemes for health and other kinds of social insurance, when the power to legislate on them and to find money for them is entirely left to Provincial Governments. Moreover, workers working on railways, inland waterways and on sea-going ships cannot easily be brought under provincial schemes of health insurance, or other social insurance, nor is it just to keep them out of such schemes.

Unemployment insurance is not mentioned in any of the Lists in the White Paper. The need for other kinds of social insurance such as for the support of mothers, widows and orphans is felt and recognised in the modern world. In order, therefore, that all these objects should be covered by the constitution it will be wiser to put in "Social Insurance" as one of the subjects and make it of concurrent jurisdiction.

The White Paper in paragraph 114 has placed a restriction upon the powers of the Federal Legislature in legislating upon subjects of concurrent jurisdiction: the Federal Legislature cannot legislate in such a way as to impose financial obligations on the Provinces.

Secondly, in his evidence, the Secretary of State for India stated that the administration of Federal Legislation on concurrent subjects will be provincial, and, thirdly, the Federal Government even in the matter of the legislation passed by it in the concurrent field will not be endowed with power to give directions to the Provincial Governments.

The practical effect of these three restrictions combined is sure to make legislation by the Federal Legislature extremely difficult. This effect will be more felt in the matter of Labour Legislation. In the first place almost every piece of legislation regarding labour will require some expenditure either by way of cash grants or by way of providing inspectorate or other officers like the Conciliation Officers or Chairmen of Industrial Courts. If the Federal Legislature cannot impose financial obligations upon the Provinces and if the Federal Government cannot administer the legislation itself,

16<sup>o</sup> Novembris, 1933.]MEMORANDUM ON LABOUR  
LEGISLATION BY MR. N. M. JOSHI.

[Continued.]

so cannot even spend its own money for it and cannot also give directions to the Provinces to see that its legislation is carried out, it is difficult for the Federal Legislature to use its power of legislation effectively. As a matter of fact, its power of legislation is useful in bringing about simultaneous uniformity in those cases when there is appreciable financial burden upon industry such as the schemes for social insurance or the regulation of hours of work for either of which Government will have to spend some money either for administrative staff or for inspectorate or as loans or cash grants, or where a minority of Provincial Governments refuse to fall in line with the views of the majority. The difficulty of Federal Government imposing financial obligations upon autonomous Provinces is easily recognised, and so it must be enabled to administer its legislation in case the legislation involves serious financial obligation, and also to give directions to the Provincial Governments where there is no serious financial obligation imposed upon them. The Secretary of State for India in his evidence has admitted the necessity of modifying the rigour of the restriction of paragraph 114 in respect of financial obligations being imposed upon the Provinces. There is really no danger in giving power to Federal Legislature to pass legislation imposing financial obligations upon the Provinces as the bulk of the Federal Legislature will be elected on the basis of territorial constituencies and so the provincial feeling will influence these members more than even the national feeling. This is clearly proved by the attitude of the present members of the Central Legislature on questions like the contributions from the Provincial Governments to the Central Government. Similarly there is no danger in empowering the Federal Legislature to administer and spend money on Labour Legislation passed by itself as the representatives of the Princes whose territories will not derive any benefit from such legislation will not easily consent to proposals on which the Federal Treasury will have to spend money to raise which the States may have to contribute. It is therefore clear that there is no risk in the Federal Legislature being empowered to pass legislation involving financial obligations upon itself or upon the Provinces, but if the latter power is to be limited, the power to adopt the former course cannot be denied if the passing of Labour Legislation by the Federal Legislature is not to be made very difficult.

The reason given by the Secretary of State for India for leaving the administration of the Labour Legislation passed by the Federal Legislature, to the Provincial Governments is that most of these subjects were for the purposes of administration provincial even under the present Constitution. In the first place this statement is not quite accurate. Both Legislation as well as its administration on the subject of the regulation of work in Mines, on Railways, and on Sea-going Ships is central. Secondly under the present Constitution no inconvenience is caused by the administration of certain Labour Legislation passed by the Central Legislature being left to the Provincial Governments as the present Central Government has powers of Supervision and Control over the Provincial Governments in the matter of Reserved Subjects which all these subjects are under the present Constitution. If the administration of Legislation regarding the Regulation of Work in Mines is left entirely to Provincial Governments it will throw an unnecessary burden upon each province to provide separate Inspectorate which at present is central. In the case of the regulation of work on Railways and Inland Waterways administration of Legislation by the Provincial Governments is bound to be difficult and complicated. It is therefore necessary that the Federal Legislature must be empowered



16<sup>o</sup> Novembris, 1933.]MEMORANDUM ON LABOUR [Continued.  
LEGISLATION BY MR. N. M. JOSHI.

to pass Legislation and also to empower the Federal Government to administer its Legislation where the administration by Provincial Governments is on financial or other grounds difficult.

The difficulty of Federal Legislation imposing serious financial obligations upon the autonomous Provincial Governments is frankly admitted although such an arrangement in a Federal Constitution is not unknown. In order to obviate this difficulty some machinery for previous consultation with the Provincial Governments and other organisations and for proper assessment of the Provincial feeling could be devised and for that purpose the model of the Industrial Council which has been recommended by the Royal Commission on Indian Labour on page 467 of its Report is useful as a well thought-out and balanced scheme. When Federal Legislature has to pass Legislation imposing serious Financial obligations upon the Provinces the passing of such proposals may be made conditional upon such proposals receiving in their favour the majority of votes of Provincial Governments on the Industrial Councils. This device will remove all the risk of Federal Legislature passing Legislation imposing serious financial obligations upon the Provincial Governments when the majority of Provincial Governments are unwilling to undertake these obligations and at the same time will remove the difficulty of the minority of Provincial Governments standing in the way of progressive legislation which requires simultaneous uniformity of legislation. The interposition of this machinery should not be required where there is no "serious" financial burden upon the provinces and the decision whether the burden is "serious" or not should be left to the Governor General at his discretion.

The Ratification of the Conventions of the International Labour Organisation is another subject of importance dealt with in the Lists of Subjects. The Secretary of State for India in giving his evidence stated that so far as British India is concerned he did not intend to make any change in the present position. At present the Government of India can ratify these conventions without the previous consent of the Provincial Governments though as a matter of practice it consults them at some stage. The wording of the White Paper on Subject 8 in List I (Federal Subjects) is unfortunate and requires modification. "External affairs, including International obligations subject to previous concurrence of the Units as regards non-Federal Subjects" are made Federal. This is satisfactory so far as it affects the whole Federation including Indian States. But if the position so far as British India is concerned, is to be different the phrase "Provincial Subjects" must be substituted for "Non-Federal Subjects".

There is also a change necessary in item No. 9 of List I (Federal Subjects). "Emigration from and immigration into India and Inter-Provincial migration, including regulation of Foreigners in India" is made Federal. But emigration from Indian States into British India and from British India into Indian States are not included in the Federal List which ought to be done. Otherwise the Indian States which are strongly represented in the Federal Legislature are placed in an advantageous position inasmuch as they will have the power to prevent the emigration of Indian workers into their territories while they will secure free access into British India for their subjects.

#### SUMMARY OF CONCLUSIONS.

1. Item No. 69 of List of Subjects II, "Health Insurance and invalid and old age pensions," should be transferred to List III, which consists of subjects of concurrent jurisdiction.

16<sup>o</sup> Novembris, 1933.]MEMORANDUM ON LABOUR  
LEGISLATION BY MR. N. M. JOSHI.

[Continued.]

2. A separate subject called "Social Insurance" should be included in List III or provision should be made for the inclusion of unemployment insurance and schemes for the support of mothers, widows and orphans in that List.

3. The restriction contained in para. 114 disabling the Federal Legislature to pass Legislation imposing financial obligations upon the Provinces should be removed, and if necessary the machinery of an Industrial Council constituted as recommended by the Royal Commission on Indian Labour on page 467 of its Report should be interposed between the Federal Legislature and Provincial Governments and the majority of Government votes on the Industrial Council should be required to be in favour in order that the Legislation introduced in the Federal Legislature be permitted to pass or, in the alternative, be permitted to be operative if passed without such majority previously obtained.

4. The interposition of the machinery proposed above need not be required where the financial obligation is not *serious* or heavy. The decision whether the obligation is "serious" or not should be left to the Governor-General at his discretion.

5. The administration of Labour Legislation passed by the Federal Legislature may be left either to the Provincial Governments or to the Federal Government according to what may be laid down in each piece of Legislation.

6. The Federal Government should possess the power of giving directions to Provincial Governments as regards the carrying out of the Legislation passed by the Federal Legislature in the concurrent sphere.

7. The language of Item No. 8 in List I should be changed so as to make it clear that the previous concurrence of the British Indian Provinces is not necessary to enable the Federal Government to undertake international obligations in the sphere in which it has power to Legislate.

8. The language of Item No. 9 in List I should be changed so as to make emigration from British India into Indian States and vice versa, a Federal Subject.

#### CONSTITUTION OF THE INDUSTRIAL COUNCIL AS RECOMMENDED BY THE ROYAL COMMISSION ON INDIAN LABOUR ON PAGE 467 OF ITS REPORT.

##### *Government Members.*

Three representatives from the Central Government, two each from Bengal and Bombay, one from each of the other Major Provinces, making ... .. 13

##### *Employers' Representatives.*

Four from Bengal, three from Bombay, two each from Madras, United Provinces and Bihar and Orissa, one each from other major Provinces and one from minor Provinces, collectively, making ... .. 17

##### *Labour Representatives.*

Distributed similarly to the Employers' representatives, making ... 17

##### *Railway Representatives.*

Two representatives of State Railways, one of Company-managed Railways and three of Railway Labour, making ... .. 6

*Nominated non-official members* ... .. 4

Total ... .. 57

## RECORD X—(contd.)

### 7. Memorandum by Sir Hubert Carr

*Evidence.*

I have had the privilege of seeing the memorandum which my fellow-delegates from India have submitted. I sympathise frequently with their angle of vision, I agree with much of their representations, and in particular I join with them in viewing the proposals of the White Paper in the light of the declarations of policy of the present National Government.

In the conviction that it is essential in the interests of orderly government, in India to secure the co-operation of politically minded Indians, and with confidence that responsibility will beget responsibility in the Government and Legislatures of the Provinces and Federation, I am at one with the Indian Delegation in welcoming the general scheme of the White Paper.

Pages 442, 591

I recognise the natural difficulties attending the constitutional advance therein envisaged; further the special risks arising from the peculiar conditions in India; but also that the White Paper contains safeguards in most cases.

There are, however, certain matters for which I beg the special consideration of the Joint Select Committee in their final deliberations, and to these, in common with the great majority of European British subjects residing in India, I attach particular importance as being designated to establish standards of security for the future administration of the country, and for the British Community.

In inviting the attention of the Committee to a few of the matters interesting to British Community in India, I have made my remarks as brief as possible. They are without prejudice to the detailed evidence, both written and oral, of the European Association, and the Associated Chambers of Commerce, and only deal with certain aspects of the Constitutional question which are set forth fully in the published Evidence.

Pages 441-504,  
591-658.

*Provincial Autonomy* cannot prove successful without satisfactory resources, and it will therefore be necessary to keep expenditure down in the early years by:—

- (1) Not too rapid extension of the franchise.
- (2) Keeping Legislatures within modest proportions; and
- (3) The prevention of wasteful expenditure.

As regards (1) and (2) comparatively large constituencies do not prevent fair representation, while as a safeguard against (3) the need for Second Chambers in almost every Province is inherent in the local conditions.

A Second Chamber is likely to be a profitable investment rather than an additional expense, and is viewed by the British Community as essential to Provincial Autonomy, as Federation is to Central responsibility.

Pages 449-450,  
592.  
Q. 1980-84,  
5785-86,  
6247-48, 8790.

In fact without Second Chambers, the British attitude to provincial responsibility would require revision.

*Representation.*—With the disappearance of the official bloc, legislatures will be almost entirely dependent on non-official representation for the contribution of British tradition; consequently, no Upper Chamber should contain fewer than three European members, while representation in Lower Chambers should not be less than set forth in the Evidence. As at present proposed, representation in several cases is shown to be inadequate.

Pages 450-454,  
595-598.

*Law and Order.*—Although agreeing to the general transfer of Police to the control of a Minister responsible to the Legislature, reservation of that section which deals with subversive crime, is a vital necessity. The Terrorist Movement in Bengal with its tendency to spread, is directed against the British in India. A breakdown of the devoted and courageous section of

evidence.

16<sup>th</sup> Novembris, 1933.] MEMORANDUM BY SIR HUBERT CARR. [Continued.]

See Annexure.

police which is fighting the movement, would place the lives of all our countrymen, official and non-official, in deadly danger. No arrangements would satisfy the British Community which would involve any weakening of the present control of this Intelligence Branch of the Police the future administration of which must be under the Governor-General, in order to give that security the British Community has a right to demand. How it is to be achieved is a matter for expert advice, but suggestions formulated by the European Association after the closest consultation and enquiry, are set forth in a letter dated 28th August, 1933, already circulated to the Committee.

Insulation of the general Police Force from political influence, close collaboration between the Inspector General of Police and the Governor as well as the Minister, and safeguarding of the internal administration of the Police, are essential to the transfer, if the morale of that splendid force is to be preserved.

*The Federation.*—Since conditional agreement was given to partial transfer of responsibility at the centre at the First Round Table Conference, nothing has transpired to render less imperative the following pre-requisites to Federation:—

- (1) the accession of a substantial majority of States;
- (2) effective establishment of the Reserve Bank;
- (3) establishment of a Statutory Railway Board; and
- (4) adequate financial resources for the Centre.

In the interests of strong Government and economy, as well as in satisfaction of the very definite wishes of the larger States which refuse to contemplate large and unwieldy bodies, I urge smaller houses at the Centre, with the Upper Chamber comprising 60 to 100 members, representing the Governments of the units, and the Lower Chamber not exceeding 150 members. In recognition of British Indian political opinion the members of the Lower House might be directly elected but with high qualifications. A Central Government of this size should prove effective for all purposes.

*The Services.*—Continuation of the European elements in the All-India Services on the minimum basis of Lee Commission percentages is essential to the success of the new Constitution, to the preservation of high standards, and to ensure effectiveness of safeguards in the hands of the Governor-General and Governors in cases of breakdown.

I.S.C. Rept.  
Vol. II, para.  
831.

*High Courts,* in order to be protected from Political influence, should be under the administrative control of the Federal Government and a charge on the Federal Revenues.

I.S.C. Rept.  
Vol. II, para.  
845-849.

High Courts  
in India N.N.  
Sircar.

*Federal Court.*—The proposal to incorporate a Supreme Court in addition to, or as a branch of the Federal Court fails to commend itself either on the score of necessity, or of economy.

*Official Languages.*—Although highly probable that English will prove to be the official language of the Federation, it is very desirable that it should have Statutory authority as the official language of India, and one of the official languages of each Province.

Page 444,  
Q. 8898.

*Appeal to Privy Council,* is a right to which Europeans in India attach the greatest value, and which they would not consent to give up.



16<sup>th</sup> Novembris, 1933.] MEMORANDUM BY SIR HUBERT CARR. [Continued.]

Evidence.

*Trial of Europeans.*—Among the limitations of Legislatures appearing in the White Paper, special importance attaches to maintenance of the present position with regard to criminal proceedings against Europeans.

*Commercial Discrimination.*—While realising that no statutory protection can be absolute, protection on the lines indicated in the Secretary of State's memorandum A.68 of 3rd November is essential to the preservation of confidence in Commercial and Industrial circles, both at home and in India, and also to enable British Merchants to secure their fair share in the future industrial development of India which is their due in view of the past achievement and future responsibilities of Britain.

Protection is also required that Professional men, who are qualified in the United Kingdom, shall not have to acquire identical qualifications in India or other than are justified by the necessities of local conditions.

Q.15773.

So far no provision appears in the White Paper to this effect.

*Local Taxation.*—It is very necessary that protection should be given from any discrimination in the shape of differential rates on certain areas, Municipal taxes on certain callings, and other methods of discrimination against certain classes by Municipalities or local bodies.

Page 456.

*Federal Finance.*—The general principle of allocation meets the approval of the Associated Chambers of Commerce of India (British). Exception is taken to the suggested Provincial surcharge on Income Tax, and it is considered that income should be prohibited as a basis for local taxation.

Q. 5568-70.  
Q. 5278-80.

The method of dividing Income Tax between the Federation and Provinces proposed in the Federal Finance Committee's Report (Cmd. 4069) appears inequitable and demands further consideration.

3rd R.T.O.,  
page 50.

The sums retained from Income Tax for the Federal Revenues should be fixed on the same percentage for all Provinces, and should be based on their taxable capacity, not on their Income Tax collections. The inequity of the suggestion is emphasised at the present time, when probably the whole Income Tax collection would be required for Federal purposes, thus meaning that Industrial Provinces would contribute far more than Agricultural Provinces for Federal expenditure.

With regard to the division of the Income Tax between Provinces, this should be based on the place of origin of the Income, and if subventions are required for certain Provinces, they should not be found by Provinces, but by Federal Revenues.

As regards the Jute Export Tax, the White Paper proposes to transfer 50 per cent. to Bengal. This tax being raised on the chief agricultural crop of Bengal affects very severely the taxable resources of the Province, and the proceeds of the tax should therefore be recognised as Provincial Revenue, and not Federal.

In the early years of the Federation, Bengal would not be unprepared to surrender half the proceeds, but presses for statutory allocation of this tax to the Province as it is wholly improbable that the Federal Legislature would ever allot more to Bengal than it is required to do by Statute. I do not forget that Export Taxes as a class are properly Federal, but they are fundamentally unsound and in the peculiar circumstances of Jute, the Tax amounts to a discriminatory tax on Bengal agricultural produce for the benefit of the Federation.

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16<sup>o</sup> Novembris, 1933.] MEMORANDUM BY SIR HUBERT CARR. [*Continued.*]

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*Anglo Indian Community.*—In justice to this Community, and for additional security in communications and transport, the retention of a proportion of the Anglo-Indian and Domiciled European Community in all Services of this nature is very necessary.

The White Paper proposals as explained in the Introduction, and by the evidence of the Secretary of State appear to provide for much of the protection and to include some of the safeguards referred to above.

As regards the form in which Instructions to Governors should be given I realise the advantage in elasticity if the powers are left implicit rather than made explicit. But there is the danger that in the absence of a direct mandate there may be in the case of some Governors with lack of experience, or after a long period of disuse a hesitancy in using, or even a failure to recognise the existence of powers which are meant to be used.

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#### ANNEXURE.

LETTER FROM THE CENTRAL ADMINISTRATION OF THE EUROPEAN ASSOCIATION.

17, Stephen Court,  
Park Street,  
Calcutta.

28th August, 1933.

Sir Hubert Carr,  
16, South Street,  
Thurloe Square,  
London, S.W.7.

DEAR SIR,

The following is a summary of the position taken up by the Association in connection with the transfer of the police portfolios to responsible Ministers in the Provinces. An examination of the Memorandum of the European Association and of the Evidence of the witnesses before the Joint Select Committee, together with a knowledge of the background to this question, reveals a picture of the conditions which are laid down by the Association as being essential to their support to the transfer of this portfolio to popular Ministers; and it may be convenient to summarise these conditions precisely.

(a) There must be no general amnesty of prisoners convicted of terrorist crime or of complicity in terrorist crime, prior to or at the inauguration of Provincial Autonomy. Previous experiences of such general releases have been unfortunate, and have led to a recrudescence of outrages and murders.

(b) The Special Bureau which is at present attached to the Home Department of the Government of India, and which deals with the co-ordination of information in regard to all-India subversive and terrorist movements, should be retained and placed under the Governor-General in his discretion. It should be further strengthened and authorised, if the occasion should arise, to enforce its will upon the Provincial police, through the corresponding Special Branches where they exist. In the case of Provinces where special Branches do not exist the enforcement of the will of the Special

16<sup>th</sup> Novembris, 1933.] MEMORANDUM BY SIR HUBERT CARR. [Continued.]

Bureau will be effected through the despatch of its officers to the Provinces to see that conditions are satisfactory and, if necessary, to inaugurate Special Branches. In this way the Governor-General will have efficient means to carry out and operate his control.

(c) The Departments of the C.I.D., referred to in paragraph (b), which are known as the Special Branches, and which deal with terrorist and subversive movements in those Provinces, where they now or may hereafter exist as separate departments, should be reserved to the supervision, direction and control of the Governor-General in his discretion, and not transferred to Ministers. In such Provinces, the Governor would act as the agent of the Governor-General in this matter, and would be responsible to the latter for this department. At the present time, this "reservation" would only operate with regard to Bengal, the Punjab and Bihar and Orissa, where separate Special Branches of the C.I.D. exist.

In all other Provinces, where conditions are normal, and where such separate Special Branches do not exist, the whole of the C.I.D. would be transferred to Ministers, and there would be no reservation in the sense referred to above. If, however, terrorist and subversive movements became dangerous and active in any such Province, then the Governor-General might require the organisation of a Special Branch for the purpose of dealing with them, and such Special Branch would, as in the case of the existing organisations in Bengal, Bihar and Orissa and the Punjab, come automatically under his direction, supervision and control, and would not be subject to the authority of the Minister. Conversely, if conditions in any of the three Provinces mentioned above improve to such an extent that the Special Branches are no longer found to be necessary, then they would disappear as separate organisations, and the Minister would be left in charge of the C.I.D. without any reservation.

The effect of these proposals is to reserve to the Governor-General acting in his discretion, all Special Branches of the Police which are organised to deal with terrorist and subversive crime. That is the reason for the Association's insistence on the retention and strengthening of the Central Bureau which deals with such movements, so as to place it under the Governor-General direct, and to enable it to carry out his wishes through the Provinces.

(d) The Association does not consider that the obligation laid upon the Governor-General and Governors in para. 47 of the Introduction and Proposal 70 of the White Paper is sufficiently explicit upon this and other points. It considers that the Governor-General and the Governors should be specifically directed to pay constant and particular attention to:—

- (i) The organisation of measures to prevent the spread of terrorist and subversive movements,
- (ii) The discipline and efficiency of the police forces,
- (iii) Rules relating to the powers and discipline of the police forces made under the Indian Police Act and Provincial Police Acts, and
- (iv) the necessity of keeping in close and constant touch with Inspectors General of Police.

(e) No amendment to the Indian Police Act of 1861 and to the Provincial Police Acts should be tabled in the Legislature without the prior assent of the Governor-General, or of the Governor in their discretion; and even then, such legislation, if passed, should be reserved for the signification of His Majesty's pleasure.

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16<sup>o</sup> Novembris, 1933.] MEMORANDUM BY SIR HUBERT CARR. [*Continued.*]

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(f) The police forces should be absolutely insulated from political interference. The authority possessed at present by the Inspector-General and other senior officers of the police in connection with appointments, promotions, postings and transfers should be continued unimpaired. This means that in these matters the Minister would be expected to accept the recommendations of his Inspector-General, but, in the event of a division of opinion between the Minister and the Inspector-General, the final decision should rest with the Governor.

With regard to the internal discipline of the Police Force, the present powers of the Inspector-General and his officers should be maintained, and there should be no appeal from them to a Public Service Commission.

Yours faithfully.

C. H. WITHERINGTON,  
General Secretary.

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## RECORD X—(contd.)

### 8. Memorandum by Begum Shah Nawaz

The Memoranda submitted by the Women's Organisations, Indian as well as British, and the evidence of the women witnesses, have clearly shown how strongly the women of India feel that the proposals in the White Paper regarding women's franchise are inadequate, and fail to give them an effective voice in the political life of their country. The members of the Simon Commission realised the important part that the Indian women were going to play in the future progress of their Motherland, and their recommendations contained a ratio of 1 woman voter to 2 men voters. As no qualifications based on property and education could effect a substantial reduction in the great disparity between men and women voters, they proposed a differential qualification to enable women to become voters in large numbers. This principle of an added qualification for women was accepted by the Franchise Sub-Committee of the First Round Table Conference, the Indian Franchise Committee, the Third Round Table Conference, and ultimately by His Majesty's Government in the White Paper. The Indian Franchise Committee, instead of giving the women a ratio of 1 to 2, reduced their proportion to 1 woman to  $4\frac{1}{2}$  men, and the White Paper further reduces the proportion to that of 1 to 7, and, as the Secretary of State in his evidence said, "it's very difficult to say how many will apply at the first election," therefore it is not possible to estimate the actual number of women who will be registered as voters under the proposed qualifications.

#### FRANCHISE QUALIFICATIONS.

##### *Property.*

The Indian women are prepared to accept the property qualification as proposed in the White Paper on the same basis as men.

##### *Education.*

They unanimously demand an educational qualification of bare literacy only for eligibility to vote in elections to the Provincial Legislatures and also for the first election to the Federal Assembly as recommended by the Indian Franchise Committee.

##### *Special Qualification.*

The majority of the Indian women disapprove of the proposed differential qualification that the wife of a voter possessing the property qualification at present entitling him to a vote for the Provincial Legislature, should have the vote. It is quite natural for women to feel that their civic rights should be given to them as individual members of the State and should not depend on factors like marriage. The women's organisations proposed that instead of the wife's vote, women above a certain age in urban areas should be enfranchised. The adults in these areas being approximately 14 million, the number of women voters would be just a little more than that recommended by the Indian Franchise Committee for the Provincial Legislatures. The women's organisations feel that it is in these areas that an intelligent and independent electorate is to be found and one that would be easy to organise and canvass. This would also lessen the Government's administrative difficulties, that of having three lists under different qualifications and others. As the merits of this qualification have been fully discussed in the evidence given by the women witnesses on behalf of the women's organisations, I need not go into the details of it. This is a qualification submitted to the Joint Select Committee by the three All-India Women's organisations, with the full support of their constituencies, therefore I would request the

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16<sup>th</sup> Novembris, 1933.] MEMORANDUM BY BEGUM SHAH NAWAZ. [Continued.]

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members to give it their special consideration. There are some women, mostly in Bengal and Madras, who are prepared to accept the wife's vote as a temporary measure. The Government has succeeded in finding the means of safeguarding the interests of the minorities and different sections in the country, why should it be difficult for them to frame a feasible qualification which would satisfy the women of India? Whatever are the qualifications ultimately decided upon by the British Parliament, the minimum number of women voters acceptable to the women of India is that recommended by the Indian Franchise Committee for the Provincial Legislatures as well as for the Federal Assembly; a ratio of 1 woman to 4½ men.

#### RESERVATION OF SEATS.

##### *Electorates.*

Many of us who have served on the Round Table Conference for the last few years realise what a great obstacle has been removed from the path of constitutional advance by the Communal Award. I am one of those, who believe that persons desiring a change in the system of electorates would be well advised to work for a settlement between the different communities in India, and that door lies open before them.

##### *Provincial Legislatures.*

The principle of reservation of seats for women having been accepted by His Majesty's Government under the Communal Award, it is essential that seats should be provided for them in all the Provincial as well as in both the Central Legislatures. Two seats should be reserved for the women of the Frontier Province in their own Provincial Legislature. Their backward condition demands that their own representatives should safeguard their interests in the Province. Provision should be made for women to become members of the upper chambers of the provinces, wherever such chambers are constituted.

##### *Federal Assembly.*

The women of Assam, Sind, Frontier Province and Orissa should have their representation in the Federal Assembly. If it is not possible to give one seat to women in each of these small provinces, a scheme should be devised whereby the women of these provinces could be represented at alternative elections.

The Indian women are very anxious that they should have a voice in the election of their own representatives to the Federal Assembly and that this should not be left in the hands of the members of the Provincial Legislatures, where there will be very few women. The result of an indirect election for women to the Federal Assembly will be that only women belonging to the majority parties in the Provincial Legislatures will have the chance of being elected to the Central Legislature and if the parties in power in the provinces are either extremist or orthodox then the women elected by them in many cases may not be the real representatives of their own sex. If out of a multi-member constituency, either in the capital city or in any other important town in the province, one seat were to be reserved for a woman to be returned, men and women of all communities voting for the candidate, this would give the women a chance of electing their own representatives to the Federal Assembly.

16<sup>o</sup> Novembris, 1933.] MEMORANDUM BY BEGUM SHAH NAWAZ. [*Continued.*]

### *Council of State.*

No mention is made in the White Paper about the representation of women in the Upper Chamber at the Centre. When both the Central Legislatures are to have almost equal powers, it is essential that some seats should be reserved for women in the Upper Chamber. If one seat in each province is not possible, let one seat be reserved for one woman out of the quota of seats allotted to the major provinces, i.e., Madras, Bombay, Bengal, Punjab and the United Provinces, or representation in the Upper Chamber could be accorded to the women of all provinces in rotation by reserving at least five seats for them on the Council of State. The high property qualification for membership of the Council of State should be supplemented by an educational qualification, either for both men and women, or, if it is not feasible for men, then for women only, in order to make more women eligible for membership of the Upper Chamber.

### "SPECIAL RESPONSIBILITY" POWERS.

(Sections 18 (a) & 70 (a)).

The powers given to the Governor-General and the Governors in Sections 18 (a) and 70 (a) are capable of very wide interpretation. Many women who have had to face tremendous obstacles in working for social reform know what a powerful weapon these clauses would place in the hands of those who are against any progressive legislation. "The prevention of any grave menace to the peace and tranquillity of India, or any part thereof" covers a large field, and might be taken to mean anything. Any section in the country objecting to a proposed legislation affecting social disabilities, could easily succeed in arresting its progress by creating disturbances here and there. It is essential that specific words should be used and that this power should be confined to crimes of violence only. As some of the members pointed out during the preliminary discussions, it is to the next fifteen or twenty years that we are looking for the removal of many of the social evils at present existing in India, and a wide power of this kind might be a great hindrance to the achievement of success in that sphere.

### FUNDAMENTAL RIGHTS.

The women of India are very anxious that equality between the sexes in their rights of citizenship should be recognised under the new Constitution. It should be made clear, either in the Constitution itself or in the Instrument of Instructions to the Governor-General, that in future sex shall be no bar to any individual, man or woman, in holding office under the Crown or serving their country in any capacity. The words "and sex" should be added to page 37, line 12, of the White Paper, after the words "caste, religion."

### ADMINISTRATIVE DIFFICULTIES.

The proposals of the Indian Franchise Committee for an electorate of 6,600,000 for the Provincial Legislatures and 1,500,000 for the Central Assembly, failed to satisfy the women of India. After the publication of the Franchise Committee's Report, cables of protest were sent to the Premier and the Secretary of State by the women's organisations. The moderate

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16<sup>th</sup> Novembris, 1933.] MEMORANDUM BY BEGUM SHAH NAWAZ. [*Continued.*]

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section of women within these organisations, realising how difficult it was going to be to have even this figure ultimately accepted by Parliament, tried to persuade the women to agree to the numbers recommended by the Lothian Committee. The publication of the White Paper further reducing these numbers to a ratio of 1 to 7, or even to a much lower figure, came as a very great surprise. Women of all sections fail to understand why, when the recommendations of an expert Committee sent out to investigate and report about the matter, should be accepted in all its essentials, some of their proposals regarding women's franchise should be turned down because of the so-called "administrative difficulties." The women of India are convinced that unless they become a part and parcel of the administration of their country through the exercise of their full voting strength, it will not be possible for them to work on a large scale for educational, medical, social and economic reforms, and make the men take more interest in matters concerning the welfare of women and children. Thanks to the priesthood, the social customs and old traditions having become almost a part of religion, the Government of the country would not, and perhaps could not, help them to unlock the door of their emancipation. The women of India know that many of these administrative difficulties are over-estimated by the Local Governments just because it is to the interest of certain sections in the country that women should not succeed in securing the power to work for progressive legislation by becoming voters in large numbers. The evidence submitted to the Joint Select Committee by some organisations has proved beyond doubt that there are strong sections in the country who would not like to see women getting any power into their hands. The time has come when His Majesty's Government should realise its duty towards half the population of the country, and if it is not possible for the Government to give the women direct help, it should do so through this indirect method.

By not accepting literacy as an educational qualification, an intelligent and most useful electorate of women has been left out. Most of the prominent women workers of to-day do not possess educational certificates of any kind, whether primary or matriculation, as, until very recently, women were educated in their own homes and parents would not allow their daughters to attend any schools. No one can deny that a literate person would be preferable to an illiterate one as a voter, and the proportion of literate women being very small, it is important that means should be found to register such women as voters. A test for literacy would not be very difficult; any woman who could read and write should be placed on the voting register. The method followed in Madras could easily be introduced into every province.

Repeated assurances have been given to us that "His Majesty's Government attach special importance to the question of securing a more adequate enfranchisement of women than the existing system," and the principle of a special qualification for women having been accepted by the Government in order to make them voters in large numbers, one cannot see why the condition of registration by application under this qualification has been considered necessary. This only means giving with one hand and taking away with the other. The conditions in India are such that in many remote villages it is difficult for women to have even an every-day letter written, and taking into consideration the obstacles that are usually put in the way of their enjoying any such privilege as the right to vote, it is clear that one woman in four or even in three will not be able to apply for registration as a voter.



16<sup>c</sup> Novembris, 1933.] MEMORANDUM BY BEGUM SHAH NAWAZ. [*Continued.*]

Purdah, personation, polygamy and numbers are the obstacles that we are told stand in the way of our obtaining the ratio recommended by one of the Government's own expert committees. Out of the ten per cent. adult women who are to have the vote according to their recommendations, barely one per cent. would be in purdah. Those who know India well are aware that purdah is confined chiefly to the upper classes amongst the Muslim community, and except in certain families in the Punjab and the Frontier Province, Muslim women inherit property. The names of many of these women are already on the revenue register as property holders and the names of some of the others could be taken from the marriage registers and the registered deeds of dower. Women could be employed to collect the names of those wives whose husbands object to giving them to men. If, even then, there should be some objection, women could be registered as "the wife of So-and-so." I am sure that if it is explained to the husband properly that this really means another vote for the family, he would give his consent to his wife's name being placed on the electoral roll. I have no hesitation in saying that if the Government were to ask the women's organisations to assist them, a great deal of voluntary help would be forthcoming. There are many teachers who have finished their training and are without hope of immediate employment, they could be employed in the preparation of the first rolls.

There are nearly ten million more men than women in India, and in certain districts in many provinces it is very difficult for a poor man to get even one wife. Polygamy has been mostly confined to the rich, and is now fast diminishing in India.

I see no reason why the danger of personation should be considered greater in the case of women voters than in that of men. It all depends upon the kind of officials the Government will employ as polling officers, and the efficiency of the machinery. A woman should be asked to bring one relation with her, to identify her as the registered voter, or else the husband should be made responsible for the identification of his own wife. If, in spite of all this, the application is still insisted upon, then the number of women voters should be increased to such an extent that the figure of those who are likely to vote should not be less than 6,600,000.

We are told that there is a great danger of the administrative machinery being severely strained at the first elections if the full number suggested by the Lothian Committee is accepted by Parliament. If there is any such danger, why should the poor women be the sufferers? If the number of those, who are to be enfranchised under the new Constitution, is to be curtailed, the ratio of women voters of at least 1 to  $4\frac{1}{2}$  men should not be disturbed.

#### PARLIAMENT AND INDIAN WOMEN.

There is a tendency in certain quarters to leave the question of the women's franchise qualifications to the future legislatures of the country. This would only mean that the Government would be shirking its responsibility towards nearly 165 million of His Majesty's subjects, and would throw the Indian women into despair. How can it be possible to give the power into the hands of one half of the country without taking into account the other half? The women's questions should be settled by Parliament itself, and after giving full consideration to the claims put forward by their own representatives at the Round Table Conference, an

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16<sup>o</sup> Novembris, 1933.] MEMORANDUM BY BEGUM SHAH NAWAZ. [*Continued.*]

adequate share in the franchise and representation in the future legislatures of India should be secured to them under the new Constitution. The claims of the Indian women have now been reduced to a minimum and if they are not recognised by Parliament, disappointment will lead to discontent, and discontent to agitation. The granting of their reasonable demands will make the women happy and contented, and the sons of such mothers will surely be a great stabilising force for the new Constitution. In the words of the Lord Chairman: "There, plain for all to see, but hitherto so little apprehended, lies the key, as I verily believe, to India's future. Privileged indeed will be he who will seize it with a firm and purposeful hand and, *brushing aside the doubters and the difficulties*, unlock and open wide the door that stands bolted and barred by the rusty prejudices of the centuries between the women of India and the high destiny that awaits them."\* Who could be more privileged to unlock that door than the members of the Joint Select Committee, and whose hand more firm and purposeful than that of the Mother of Parliaments?

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\* The Marquess of Linlithgow, in *The Indian Peasant*.

# JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM.

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